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Thomas. THE Strangways.

Attorney's Practice

England. IN

The Court of King's Bench:

OR, AN

INTRODUCTION

TO THE

Knowledge of the Practice of that Court, as it now ſtands under the Regulation of ſeveral late Acts of Parliament, Rules and Determinations of the ſaid Court:

WITH

Variety of uſeful and curious Precedents in *Engliſh*, ſettled or drawn by Counſel; and a complete Index to the whole.

By a Gentleman of the *Inner Temple*.

In the SAVOY:

Printed by E. and R. NUTT, and R. GOSLING, (Aſſigns of *E. Sayer*, Eſq;) for T. Woodward at the Half-Moon between the *Temple-Gates*, *Fleet-ſtreet*. M.DCC.XXXIX.

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THE

PREFACE.

MOST of the Modern Books of this ſort hitherto publiſhed being but mere Copies and Tranſlations of old Ones long ſince Obſolete, with the Addition only of a few Rules of Court or an Abſtract of an Act of Parliament, have proved of very little Service to the Profeſſion, but have rather puzzled and confounded young Beginners, by the Tranſcribers handing down Rules and Methods of Practice as long ſince out of Uſe as the Books they have copied. It was this in-

duced the Author to undertake the following Work, wherein he has confined himself to the Rules now in Force, and such Acts of Parliament and adjudged Cases, as relate to the present Practice of the Court, whereunto he has added such Observations as he has himself made in the Course of many Years Practice, and which (he has Reason to think) will not be thought an unacceptable Part of this Work. As to the Precedents, they are such as are of most frequent Use in the Practice, and were for the greatest Part drawn by the most eminent Pleaders.

THE

THE ATTORNEY'S PRACTICE IN THE Court of King's Bench.

Of the Jurisdiction of the Court.

THE Court of *King's Bench*, so called, for that the King is supposed by the Process of the Court to sit there, as He formerly did, consists of a Chief Justice created by Writ, and three other Judges created by Letters Patent. *Judges of the Court; How created.*

By the Statute 20 Ed. 3. 1. The King's Justices are to take no Fee but of the King. *Stat.* 20 Ed. 3. 1.

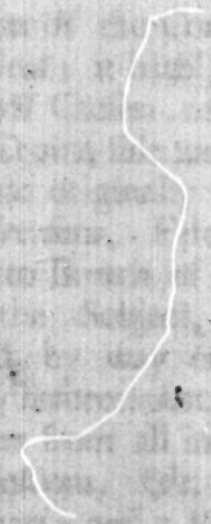
And, By the Statute 12 *W.* 3. 2. It is enacted, That the Judges Commissions be *Quamdiu bene se gesserint*, but removeable upon Address of both Houses. *Their Commissions* Quamdiu bene se gesserint.

The Judges of this Court are the Sovereign Justices of Oyer and Terminer, Gaol-delivery, and of Eyre, Conservators of the Peace, and the Sovereign Coroners of the Land. *Their Powers*

Juriſdiction of the Court. The Juriſdiction of the Court is general, and over all *England*; it hath Juriſdiction in Criminal and Civil Cauſes, and accordingly is divided into a Crown-ſide and a Plea-ſide.

Crown-ſide. The Crown-ſide originally takes Cognizance of all Treaſons, Felonies, Miſdemeanors tending to Breach of the Peace, or Oppreſſion of the Subject, and of all Cauſes proſecuted by way of Indictment, Inquiſition, or Information. Into this Court Indictments from all inferior Courts, and Orders of Seſſions, *&c.* may be removed by *Certiorari*; and a Reſcous may be returned by the Sheriff; Inquiſitions of *Felo's de ſe*, or *per Infortunium Interfect'*, are certified hither of courſe. Hence alſo iſſue Attachments for diſobeying Rules or Orders, concerning which the Party ſhall be examined upon Oath to Interrogatories, and if guilty ſhall be fined, and if innocent diſcharged.

Plea-ſide. On the Plea-ſide, it hath Conuſance in all Pleas, by Bill, of Debt, Detinue, Covenant, Account, and of all Actions of the Caſe, either upon Promiſe, ſcandalous Words, Nuſances, Trover and Converſion, on Penal Statutes, and all other perſonal Actions, Ejectment, *&c.* againſt any Perſon ſuppoſed to be in the Cuſtody of the Marſhal; and in all perſonal Actions, for or againſt any Officer, Miniſter, or Clerk of the Court. Theſe Officers, if they are ſued in any other Court, muſt have the Privilege of this Court in reſpect of their neceſſary Attendance there. This Court alſo may hold



hold Plea, by original Writ out of *Chancery*, of all Treſpaſſes on the Caſe, Trepaſſes *Quare vi & armis*, Replevins, *Quare Impedits*, *&c.* but, as it is ſaid, not in Debt, Detinue, Covenant or Account.

The Court may alſo regularly examine all and all manner of Errors in Fact and in Law, of all Judges and Juſtices in their Judgments, Proceſſes and Proceedings in Courts of Record, not only in Pleas of the Crown, but in all Pleas real, perſonal and mixt (the Court of *Exchequer* excepted); it may reverſe a Judgment given in the *King's Bench* in *Ireland*.

May examine Errors in other Courts; *except* Exchequer. *May reverſe Judgment of the* King's Bench *in* Ireland.

It grants an *Habeas Corpus* to relieve Perſons wrongfully impriſoned; for upon Return of the Cauſe, they may be bailed or diſcharged.

Grants Habeas Corpus.

It grants *Mandamus's* to inferior Courts to command them to do their Duty, and Prohibitions to keep them within their proper Juriſdictions.

Mandamus's *and Prohibitions.*

The Errors of this Court cannot be reverſed but in the Houſe of Lords, except in ſome Caſes, where the Action is firſt commenced in the Court of *King's Bench* (and not by Original out of *Chancery*) according to the 27 *Eliz. cap.* 8. by which Statute the Error may be examined in the *Exchequer Chamber*, but thence too it may be removed into Parliament.

Writ of Error from this Court muſt be returnable in Parliament, if by Original. *If by Bill, in the* Exchequer Chamber.

Officers of the Court of King's Bench.

Crown-ſide.

Maſter of the Crown-Office.

His Conſtitution.

ON the Crown-ſide.

The King's Coroner and Attorney in the Court of *King's Bench*, commonly called the Clerk of the Crown, or Maſter of the Crown-Office in the Court of *King's Bench*, now *James Burrow*, Eſq; holds his Place for Life by Letters Patent under the Great Seal of *Great Britain*.

Duty.

He has the Cuſtody of all the Records in his Office. He is to attend the Court when ſitting, and at his Office every Afternoon in Term-Time, and every Morning and Afternoon in the Vacation; He Iſſues out the Proceſs of the Court on the Crown-ſide; Examines and Reports all Matters referred to him by the Court, or by any Judge of the Court; enters the Award of the ſeveral Proceedings of the Court, by marking them upon the King's Rolls and other Records, of which he hath the Cuſtody; taxes Coſts, and ſettles Attornies Bills, when referred to him; nominates all ſpecial Juries on the Crown-ſide; takes Recognizances from the Proſecutors of Informations; takes an Inquiſition upon the Death of any Priſoner dying in the *King's Bench* Priſon; and does all other Acts by himſelf, or his Subſtitutes, incident to the ſaid Office, as are ſet forth under the ſeveral Accounts of the Duty of his Clerks and Subſtitutes aftermentioned.

The

The Secondary in the Crown-Office, Mr. *Henry Maſterman.* *Secondary.*

He is appointed by Writing under the Hand and Seal of the Clerk of the Crown. *Appointment.*

He is to make up a general Docket every Term of all the Proceedings on the Crown-ſide; to collect, number, and ſort the Rolls; to make up every iſſuable Term an Eſtreat in Paper of all Fines, Amerciaments and Recognizances forfeited to the Crown, and to ingroſs and deliver the ſame over a Week before the End of the Term to the *Cuſtos Brevium*; to draw up Paper-Books in Cauſes where there are ſpecial Pleadings; to give Certificates of Perſons having taken the Oaths to the Government, and to aſſiſt the Clerk of the Crown in the Execution of his Office by attending the Court, to adminiſter the Oaths taken to the Government, upon Trials at Bar on the Crown-ſide, upon the Arraignment of Priſoners, and upon the Day the Grand Jury receive their Charge; and by doing ſuch other of the Duty of the Clerk of the Crown as he requires to be done by his Secondary. *Duty.*

The Clerks of the Clerk of the Crown, commonly called the Clerks of the Crown-Office, the ſaid Mr. *Henry Maſterman*, Mr. *John Mathews*, Mr. *Richard Roſe*, Mr. *Henry Walrond*, Mr. *Henry Athorpe*, Mr. *Charles Haddocke*, Mr. *Edmund Webb*, and Mr. *John Bach*. *Clerks of the Crown-Office.*

Appointment. They are admitted in Writing by the Clerk of the Crown for the Time being, for their ſeveral and reſpective Circuits or Diviſions, by his ſubſcribing his Name to an Entry of an Appearance by each Clerk; and alſo to a Particular of the Counties, Cities and Towns allotted to ſuch Clerk for his Circuit or Diviſion.

Duty. Theſe Clerks in their reſpective Circuits or Diviſions are to make Dockets of the Proceedings in every Cauſe ariſing within their ſeveral Circuits or Diviſions; to make a general Comptrolment or Abſtract of the Pleadings or Proceedings; to enter upon Record all their Proceedings at large; to inrol Pardons, Grants of Deodands and Felons Goods, and to make out all ſpecial Writs and other Proceſs iſſuing out of the ſaid Court on the Crown-ſide.

Clerk of the Rules on the Crown-ſide. The Clerk of the Rules on the Crown-ſide, Mr. *Henry Atborpe.*

Appointment. He is appointed for Life by Writing under the Hand and Seal of the Clerk of the Crown.

Duty. He is to take Minutes of all the Rules on the Crown-ſide; to draw up and enter the ſame in a Book kept in the ſaid Office for that Purpoſe, and to make Copies thereof when required; to file and copy Affidavits in Cauſes on the Crown-ſide, (which Duty formerly belonged to the Secondary); to make a Paper of all Cauſes that are ſet down for Argument, and to deliver to each Judge of the Court a Copy.

The

The Founder of the Crown Office, Mr. *Henry Weekes*. *Founder of the Crown Office.*

He is verbally appointed by the Chief of the Crown. *Appointment.*

He files all Interrogatories exhibited in the Court against Perſons for Contempts, and examines them thereon, and makes Copies of ſuch Interrogatories, and the Examinations thereon when required, and ſigns the ſame; and if the Parties do not attend to be examined, he certifies their Defaults. *Duty.*

The Calendar Keeper of the Crown Office, Mr. *Henry Weekes*. *Calendar Keeper.*

Holds this by verbal Appointment of the Chief of the Crown. *Appointment.*

He is to make an Alphabet every Term of the Indictments, Informations, Convictions and Inquiſitions on the Rolls of the ſaid Office, called the Plea Rolls, to regard Perſons againſt Coroners for Default in their Inquiſitions, and to attend ſuch Diſtrict. *Duty.*

The Clerk of the Grand Jurors, Mr. *John Mathew*. *Clerk of the Grand Jurors.*

He holds his Place for Life by verbal Appointment under the Hand of the Chief of the Crown. *Appointment.*

His Duty is to make out a Precept to the Sheriff of *Middleſex* to attend the Grand Juries, to call over the Juries, to attend their ſeveral Appearances, Defaults, and Fines being levied, to make out Warrants to the High Conſtables within the Hundred *Duty.*

Appointed. They are appointed in Writing by the Clerk of the Crown for the Time being, for their several and respective Circuits or Divisions, by his subscribing his Name to an Entry of an Appointment by each Clerk; and also to a Particular of the Counties, Cities and Towns allotted to such Clerk for his Circuit or Division.

Duty. Their Clerks in their respective Circuits or Divisions are to take Declara of the Proceedings in every Cause arising within their several Circuits or Divisions; to make a general Comptoirnes or Abstract of the Pleadings or Proceedings; to enter upon Record all their Proceedings at large; to make Rolls, Copies of Declarations and Peine Cards, and to make out all special Writs and other Process issuing out of the said Court on the Crown-side.

The Clerk of the Rules on the Crown-side, his Duty, Office.

His Appointment.

He is appointed for Life by Writing under the Hand and Seal of the Clerk of the Crown.

Duty. It is to take Minutes of all the Rules on the Crown-side; to draw up and enter the same in a Book kept in the said Office for that Purpose, and to make Copies thereof when required; to file and copy Affidavits in Causes on the Crown-side, (which Duty formerly belonged to the Secondary); to make a Paper of all Causes that are set down for Arguing, and to deliver to each Judge of the Court a Copy.

The

Examiner of the Crown-Office.

The Examiner of the Crown-Office, Mr. *Henry Walrond.*

Appointment.

He is verbally appointed by the Clerk of the Crown.

Duty.

He files all Interrogatories exhibited in the Court againſt Perſons for Contempts, and examines them thereon, and makes Copies of ſuch Interrogatories, and the Examinations thereon when required, and inrols the ſame; and if the Parties do not attend to be examined, he certifies their Defaults.

Calendar Keeper.

The Calendar Keeper of the Crown Office, Mr. *Henry Walrond.*

Appointment.

Holds alſo by verbal Appointment of the Clerk of the Crown.

Duty.

He is to make an Abſtract every Term of the Indictments, Informations, Convictions and Inquiſitions on the Rolls of the ſaid Office, called the Bag-Rolls; to award Proceſs againſt Coroners for Defects in their Inquiſitions, and to amend ſuch Defects.

Clerk of the Grand Juries.

The Clerk of the Grand Juries, Mr. *John Mathews.*

Appointment.

He holds his Place for Life by written Appointment under the Hand of the Clerk of the Crown.

Duty.

His Duty is to make out a Precept to the Sheriff of *Middleſex* to ſummon the Grand Juries; to call over the Juries, to record their ſeveral Appearances, Defaults, and their being ſworn; to make out Warrants to the High Conſtables within the Hundred

of *Offulſton*, directing them to ſummon their petit Conſtables to appear before the Grand Jury of that Hundred to make their Preſentments; to call over the Petty Conſtables within the ſaid Hundred, and to mark their ſeveral Appearances, and file ſuch Preſentments as they ſhall make; and draw and ingroſs Indictments on ſuch of them as are indictable.

Plea-ſide. On the Plea-ſide is,

Chief Clerk. The Chief Clerk, who is ſtiled in the Records of the Court *Capitalis Clericus Domini Regis ad Placita in Curia ipſius Domini Regis coram ipſo Rege irrotulandi Aſſignatus*, now *Edward Ventris*, Eſq;

Now Anthonyſe Bigge Appointment. This Office has immemorially been granted for Life or Lives by the Chief Juſtice of this Court for the Time being; and the late Sir *John Holt*, late Lord Chief Juſtice of the ſaid Court, by Writing under his Hand and Seal, granted this Office to *Rowland Holt*, Eſq; (ſince deceaſed) and the ſaid *Edward Ventris*, to hold the ſaid Office for their Lives, and the Life of the Survivor of them, to be exerciſed by them, or either of them, his or their ſufficient Deputy or Deputies.

Duty. The Duty of this Officer is to iſſue out all the Proceſs of the Court on the Plea-ſide, or in Cauſes between Party and Party, where the Proceedings are by Bill, to attend the Court wherever the ſame is held; to record and enter the Rules and Orders of the Court; to inrol the Pleadings

and

and Judgments of the Court; to file Poſteas and Writs of Error, and all ſpecial and common Bails; to keep Remembrances of all Writs and Records of Judgments, and to do ſuch Acts by himſelf or Subſtitutes, as are after ſet forth to be done by his Clerks and Subſtitutes aftermentioned.

Secondary. The Secondary, or Deputy to the Chief Clerk, now *Samuel Clarke*, Eſq;

Appointment. He is verbally appointed by the Chief Clerk.

Duty. He aſſiſts the Chief Clerk in the Execution of his Office, by attending the Court wherever the ſame is held; and after the Riſing of the Court he attends at his Office in the *Temple* every Afternoon in Term-Time, and every Morning and Afternoon in the Vacation, to ſign Judgments, and to examine all Matters referred to him by the Court, and to make his Report thereon to the Court; to tax Coſts and Attorny's Bills, when referred to him; to take the Acknowledgment in Court of all Deeds to be inrolled, all Bails juſtified in Court, Affidavits ſworn in Court; and to charge the Marſhal with the Cuſtody of all Perſons brought into Court by *Habeas Corpus*; to ſwear Attornies in open Court, and cauſe their Admiſſions to be inrolled; to diſcharge Recognizances of Bail upon the Defendant's Surrender to the Cuſtody of the Marſhal; to nominate ſpecial Juries; to record the Verdict of the Jury upon Trials at Bar; to draw up ſpecial Verdicts found upon ſuch Trials,

and

and to make Certificates of all Judgments to be regiſtered in the Counties of *Middleſex* and *York*.

He has the Cuſtody of all Money paid into Court, and for the keeping thereof is paid 20 *s.* for every Hundred Pounds, and after that Rate for every greater or leſſer Sum; and for every Sum under 10 *l.* he is paid 2 *s.* *Paſ.* 5 *Jac.* 1.

But this Duty is now done by the Signer of the Writs, as his Deputy.

Clerk of the Rules. The Clerk of the Rules, now Mr. *James Mundy*.

Appointment. He holds his Place for Life by Appointment in Writing under the Hand and Seal of the Chief Clerk.

Duty. He is to attend the Court, and take Minutes of the Rules and Orders made by the Court in Civil Actions between Party and Party, and to draw up the ſame, and make Copies thereof when required; and to file and copy all Petitions and Affidavits on the Civil Side; and to draw and ingroſs Aſſignments of the Eſtate and Effects of poor Priſoners diſcharged by an Act of Parliament made for the Relief of Debtors, with reſpect to the Impriſonment of their Perſons.

Clerks of the Papers. The Clerks of the Papers, now Mr. *Edward Benton* and Mr. *Robert New*.

Appointment. They hold this Office by Writing under the Hand and Seal of the Chief Clerk, for their

their Lives and the Life of the longer Liver of them.

They attend the Court at *Westminster* every Day during the Sitting thereof, and at the *King's Bench* Office every Afternoon in Term-Time; they read the Rules of Court, Affidavits, Records, Deeds, Briefs, Suggestions, and other Matters on the Plea-side of the Court: All special Pleadings on the Plea-side of the Court, in Cases by Bill, are left with the Clerks of the Paper, who make Copies of such special Pleadings, and when Issue is joined thereon, make up the same into Paper-Books, and set down all Causes to be argued in Court on Writs of Error and Demurrers, or other special Matter, and deliver a Copy thereof to the Judges. These Officers also claim the Copying of all special Pleadings, and making up the Paper-Books where the Proceedings are by original Writ; and in *Michaelmas* Term 1734, the Court determined the Right with them; but it is said they had entirely nothing to do in such Cases; and they do not now claim such Right on *Bills Filed*, Writs of Error, and *Judicia Quorum*, which two last are always Proceedings by original Writ.

Clerk of the Doggets, Commitments, and Satisfactions, now Mr. *Morris Emerson*. *Clerk of the Doggets.*

He holds his Office for Life by Appointment under the Hand and Seal of the Chief Clerk.

His

and to make Certificate of all Judgments to be ingrossed in the Courts of Middlesex and York.

He has the Custody of all Money paid into Court, and for the keeping thereof is paid 20 s. for every Hundred Pounds, and also due Rate for every greater or lesser Sum; and for every Sum under 100 l. he is paid 2 s. [illegible]

The Deputy is now done by the Signer of the Writs, as his Deputy.

The Clerk of the Rules, now Mr. James Already.

He holds his Place for Life by Appointment, in Writing, under the Hand and Seal of the Chief Clerk.

He is to attend the Court, and take Minutes of the Rules and Orders made by the Court in Civil Actions between Party and Party, and to draw up the same, and make Copies thereof when required; and to file all copy all Pleadings and Affidavits in the Civil Side; and to draw and ingross Allignments of the Fifths and Effects of poor Prisoners discharged by an Act of Parliament made for the Relief of Debtors, with respect to the Dispatch-part of their Office.

The Clerk of the Papers, now Mr. Edward Bendo and Mr. Robert Nevo.

They hold their Office by Writing, under the Hand and Seal of the Chief Clerk, for their

their Lives and the Life of the longer Liver of them.

They attend the Court at *Weſtminſter* every Day during the ſitting thereof, and at the *King's Bench* Office every Afternoon in Term-Time; they read the Rules of Court, Affidavits, Records, Deeds, Libels, Suggeſtions, and other Matters on the Plea-ſide of the Court: All ſpecial Pleadings on the Plea-ſide of the Court, in Cauſes by Bill, are left with the Clerks of the Paper, who make Copies of ſuch ſpecial Pleadings, and when Iſſue is joined thereon, make up the ſame into Paper-Books, and ſet down all Cauſes to be argued in Court on Writs of Error and Demurrers, or other ſpecial Matters, and deliver a Copy thereof to the Judges. Theſe Officers alſo claim the Copying of all ſpecial Pleadings, and making up the Paper-Books where the Proceedings are by original Writ; and in *Michaelmas* Term 1734. the Court determined the Right with them; but it is ſaid they had antiently nothing to do in ſuch Caſes; and they do not now claim ſuch Right on *Scire Facias*, Writs of Error, and *Audita Querela*, which two laſt are always Proceedings by original Writ. *Duty.*

Clerk of the Doggets, Commitments, and Satisfactions, now Mr. *Martin Lantrow.* *Clerk of the Doggets.*

He holds his Office for Life by Appointment under the Hand and Seal of the Chief Clerk. *Appointment.*

He

Duty. He makes and keeps an alphabetical Dogget of the Judgments, and all other Entries upon Record in the ſaid Court on the Plea-ſide, and enters Commitments and Satisfactions.

Clerk of the Declarations. The Clerk of the Declarations, now Mr. *Ralph Day*,

Appointment. Is appointed for Life by Writing under the Hand and Seal of the Chief Clerk.

Duty. His Duty is to receive, file and pye all Declarations and Bills in the ſaid Court; to ſhew the Files to the Filacers, Clerks, and Attornies of the Court; to grant Certificates to Priſoners to enable them to apply for their Diſcharges; to attend at *Weſtminſter*, or on a Judge of the Court, with the Records in his Cuſtody, when required; and to attend at the *King's Bench* Office for the Diſpatch of the ſaid Buſineſs.

The Clerks, Filacers, and Attornies of the Court are to pay to this Officer for Receiving, filing, and keeping the Bills and Declarations 2 *s.* at the End of every Term. And if any of the Clerks, Filacers, or Attornies ſhall refuſe to pay the ſame on Requeſt, they may be ſuſpended from the Privilege of their Practice, at the Diſcretion of the Chief Clerk or Secondary. *Mich.* 15. *Paſch.* 19 *Car.* 2.

Clerk of the Common Bails, &c. The Clerk of the Common Bails, Eſtreats and Poſteas, now Mr. *Charles Haddock*.

He

Duty. He makes and keeps an alphabetical Dogget of the Judgments, and all other Entries upon Record in the ſaid Court on the Plea-ſide, and enters Commitments and Satisfactions.

Clerk of the Declarations. The Clerk of the Declarations, now Mr. *Ralph Day*,

Appointment. Is appointed for Life by Writing under the Hand and Seal of the Chief Clerk.

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Clerk of the Common Bails, &c. The Clerk of the Common Bails, Eſtreats and Poſteas, now Mr. *Charles Haddock.*

He

He holds his Office for Life by Appointment under the Hand and Seal of the Chief Clerk. *Appointment.*

He files all Common Bails, makes out Certificates to the Marſhal on the filing of Common Bail for Priſoners on a Judge's Order for their Diſcharge; marks *Deliberaturs* on Poſteas, eſtreats all Amerciaments ſet by the Court, and adminiſters the Oath taken of the Service of Writs according to the late Act of Parliament. *Duty.*

The Signer of the Writs, Mr. *John Hawly*, *Signer of the Writs.*

Holds his Place by Parol Appointment only. *Appointment.*

His Duty is to ſign all ſignable Writs, and to enter the Remembrance of them on Rolls of Parchment; to take and file Affidavits to hold to Bail; to receive and deliver out Writs of Error and *Certiorari*, and to enter them in a Book; to file Writs and ſpecial Bails; to make Copies of Writs and Affidavits, and to attend the Judges when required. *Duty.*

The Clerk of the Treaſury, and *Cuſtos Brevium & Recordorum* of the Court of *King's Bench*, now *Beverſham Filmer*, Eſq; and Mr. *Theodore Johnſon*. *Clerk of the Treaſury.*

The Office of Clerk of the Treaſury and *Cuſtos Brevium & Recordorum*, formerly called the Office of *Cuſtos Brevium & Recordorum*, is an antient Office, and is an Office for Life, at the Diſpoſal of the Lord Chief

Chief Juſtice of the Court for the Time being, as appears by a general Rule of Court made *Paſch.* 4 *Jac.* 1.

Appointment. The late Lord *Raymond*, Chief Juſtice of the ſaid Court, by Writing under his Hand and Seal, conſtituted and appointed the ſaid *Beverſham Filmer* and *Theodore Johnſon*, and the longer Liver of them, to be Clerk of the Treaſury and Keeper of all the King's Writs and Records of the ſaid Court (except the making the Records of *Niſi Prius* in the County of *Middleſex*, and Tranſcripts and Certificates upon Writs of Error, and receiving and filing of *Queriturs* and Attachments in the ſame Court, and the keeping of the Records of Attainder); to hold for Life, and the Life of the longer Liver of them.

Duty. This Officer has the Poſſeſſion of the Treaſury of the ſaid Court at *Weſtminſter*, and the Cuſtody and Charge of the Records and Writs there; before the Beginning of every Term, he gives notice in Writing to one of the Judges, whoſe Turn it is to keep the Eſſoin, and attends the Judge at *Weſtminſter*, with the other Officers of the Court for that Purpoſe; he likewiſe gives conſtant Attendance at the Treaſury by himſelf or Deputy every Day in Term, during the ſitting of the Court, and attends with the Keys of the Treaſury in Vacation-Time, when required. In order to ſearch for, make Copies and Exemplifications of Records; And at the End of every iſſuable Term, he tranſcribes from the Records all Iſſues, Fines, Amerciaments

and Recognizances forfeited, which are to be eſtreated into the Court of *Exchequer*; he tranſcribes and ingroſſes from the Plea-Rolls all Iſſues that are to be tried by *Niſi Prius* in the ſaid Court, and examines the ſame with the Plea-Roll (except as aforeſaid) and after they are examined, ſeals them for Trial; and by his Clerks, he gives daily Attendance at his Office in *Gray's Inn* from the Time the Judges appoint their Circuits till the Circuits are over, for the tranſcribing, examining, and ſealing the Records of *Niſi Prius*, for all the Circuits in *England*, and for making Exemplifications if required.

Clerk of the Cuſtos Brevium *in the Inner Treaſury.*

The Clerk of the *Cuſtos Brevium* in the Inner and Upper Treaſury, Mr. *William Tully* the Elder.

Appointment.

He holds his Office by verbal Appointment from the Clerk of the Treaſury.

Duty.

He performs the Duty of the Clerk of the Treaſury and *Cuſtos Brevium* in the Inner and Upper Treaſury.

Clerk of the Cuſtos Brevium *in the Outer Treaſury.*

The Clerk of the *Cuſtos Brevium* in the Outer Treaſury, Mr. *William Tully* the younger.

Appointment.

He is appointed by Writing under the Hand and Seal of the *Cuſtos Brevium.*

Duty.

He is to perform the Duty of the Clerk of the Treaſury and *Cuſtos Brevium* in the Outer Treaſury, and has the filing and keeping the Plea-Rolls of the Plea-ſide of the ſix laſt Terms.

The

Clerks of Niſi Prius.

The Clerks of *Niſi Prius* the ſaid Mr. *William Tully* the Elder, Mr. *John Sedgwick*, and the ſaid Mr. *William Tully* the younger.

Appointment.

They are verbally appointed by the *Cuſtos Brevium.*

Duty.

They are as Clerks to the *Cuſtos Brevium*, to tranſcribe from the Plea-Rolls all Iſſues to be tried by *Niſi Prius* in the reſpective Circuits, and to ingroſs the *Jurata's* thereto; and to make Exemplifications thereof, if required.

Signer of the Bills of Middleſex.

The Signer of the Bills of *Middleſex*, Mr. *David Lewis.*

Appointment.

He is appointed in Writing by the three Puiſne Judges.

Duty.

He ſigns all Proceſs by Bill of *Middleſex*, keeps proper Books to enter the ſame, with Alphabets referring thereto, for Suitors and others to have Recourſe to; adminiſters the Oaths on Affidavits of the Cauſes of Action, and makes Alphabets referring thereto; makes Copies of ſuch Affidavits, and gives Certificates when required.

Clerk of the Errors.

The Clerk of the Errors, *Robert Salkeld*, Eſq;

Appointment.

Is verbally appointed by the Lord Chief Juſtice of the Court for the Time being.

Duty.

It is his Duty to allow all Writs of Error directed to the Lord Chief Juſtice of the ſaid Court, and brought upon Judgments given

given by the ſaid Court in Crown as well as in Civil Cauſes; and upon the Allowance thereof, to give Certificates, and to make out *Superſedeas's*, if deſired, immediately where Bail is not required; but not till after the Bail is compleat, where Bail is required; to attend the taking of Bail, to give Rules for better Bail; to attend the Judges in Court with the Bail-Book upon adding or juſtifying Bail; to draw up the Recognizances, and enter them on Record; to give Rules to tranſcribe the Records, and indorſe the Returns on Writs of Error; to make Tranſcripts of the Records; to get the Returns ſigned by the Lord Chief Juſtice; and to deliver ſuch Writs of Error as are returnable in the *Exchequer* Chamber, with the Tranſcripts annexed to the Clerk of the Errors of the *Exchequer* Chamber; and if the Writs of Error are returnable in Parliament, to carry them and the Tranſcripts to the Houſe of Peers; and in Caſes where the Records are not tranſcribed, he is to ſign *Non-Proſs's* on ſuch Writs of Error.

Sealer of the Writs.

The Sealer of the Writs,
The moſt Noble *William* Duke of *Cleveland*.

Appointment.

His late Majeſty King *Charles* the Second, by Letters Patent under the Great Seal of *England*, granted this Office to the Moſt Noble *Charles* late Duke of *Cleveland*, then Earl of *Southampton*, and his Heirs Male; in Default of Iſſue Male of Lord *George Fitzroy* ſince deceaſed without Iſſue Male, un-

der certain yearly Rents to the Amount of 631 *l.* 10 *s.* The preſent Duke of *Cleveland* came into Poſſeſſion of this Office by Virtue of the ſaid Letters Patent on the Death of his Father, the ſaid *Charles* Duke of *Cleveland*, and exerciſes the ſame by Mr. *John Cartwright* his Deputy.

Clerk for tranſcribing Records of Niſi Prius *in* Middleſex.

The Clerk of the Lord Chief Juſtice for tranſcribing from the Plea-Roll the Records of *Niſi Prius*, in the County of *Middleſex*, is Mr. *William Tully* the Elder.

Appointment.

This Officer is appointed by the Chief Juſtice of the ſaid Court for the Time being.

Duty.

His Duty is to tranſcribe from the Plea-Roll the ſaid Records of *Niſi Prius*, and to examine and ſeal the ſame; and to receive and file the Warrants of Attorney on the Plea-ſide of the Court.

Judges Clerks.

The Judges Clerks.

Appointment.

They are verbally appointed by the reſpective Judges whom they ſerve.

Duty.

And they are to attend their reſpective Judges for the more eaſy Diſpatch of ſuch Buſineſs as comes before them.

Filacers.

The Filacers are Mr. *Thomas Vaughan*, Mr. *Martin Lantrow*, and Mr. *Theodore Johnſon*.

Appointment.

They hold their Places for their Lives by Appointments under the Hand and Seal of the Chief Juſtice of the Court for the Time being.

Their Duty is to write on Parchment, and to enter on Record all Writs of *Capias*, *Alias*, *Pluries*, Exigent, Proclamation, and Outlawry, *Pone*, and *Diſtringas*, and all other Writs and Proceſs founded on original Writs out of *Chancery*, returnable in this Court, and iſſued before the Defendant's Appearance; and to enter Bails and Appearances to ſuch Proceſs, and make Tranſcripts of Outlawries into the *Exchequer*. *Duty.*

Mr. *Vaughan* has acted as Filacer for the following Counties, Cities, and Towns.

Counties of *Bedford*, *Berks*, *Bucks*, *Cambridge*, *Cornwall*, *Cumberland*, *Dorſet*, *Hereford*, *Hertford*, *Huntingdon*, *Kent*, *Leiceſter*, *Middleſex*, *Norfolk*, *Northampton*, *Nottingham*, *Northumberland*, *Oxford*, *Rutland*, *Salop*, *Southampton*, *Somerſet*, *Stafford*, *Suffolk*, *Surry*, *Warwick*, *Weſtmoreland*, *Worceſter*, *Wilts*, and *York*.

Cities of *Canterbury*, *Coventry*, *London*, *Litchfield*, *Norwich*, *Worceſter*, and *York*.

Towns of *Newcaſtle upon Tyne*, *Kingſton upon Hull*, *Nottingham*, *Pool*, and *Southampton*.

Mr. *Martin Lantrow* Acts as Filacer for the County of *Devon*, City of *Exeter*, and County of the ſame City; and

Mr. *Theodore Johnſon* acts as Filacer for the Counties of *Eſſex* and *Monmouth*.

Uſher and Cryer, (formerly called Cryer and Porter) now Mr. *John Collier*. *Uſher and Cryer.*

Appointment. He holds his Office for Life by Letters Patent under the Great Seal of *Great Britain*; and executes his Office by two Deputy Uſhers, and two Deputy Cryers, whom he appoints by Writing under his Hand and Seal for their Lives.

Duty. His Duty is to take Care that the Court Room be kept in Order; to attend the Judges Chamber at *Weſtminſter*, the Court when ſitting; to make all Proclamations that are to be made therein, and to aſſiſt in adminiſtring Oaths taken in Court.

Deputy Court-Keeper, appointed by the Cryer and Uſher: And,

The Keeper of *Weſtminſter-Hall*, appointed by the Warden of the *Fleet*. Both theſe Perſons claim and take Fees from the Suitors of the Court on Trials at *Weſtminſter*; but neither of them are apprehended to be Officers of the Court, and conſequently intitled to no Fees.

Marſhal of the King's Bench. The Marſhal of the *King's Bench* Priſon is *Richard Mullens*, Eſq;

Stat. 8, 9 W. 3. By an Act of Parliament made in the 8 and 9th Years of the Reign of King *William* the Third, Intitled 'An Act for the 'more effectual Relief of Creditors in Caſes 'of Eſcapes, and for preventing Abuſes in 'Priſons, and pretended privileged Places, It is among other Things enacted, 'That from 'and after the firſt Day of *May* 1697. 'The Office of Marſhal of the *King's Bench* 'Priſon

'Priſon ſhould be executed by the Perſon 'or Perſons to whom the Inheritance of 'the ſaid Priſon, Priſon-Houſe, Lands, 'Tenements, and other Hereditaments of the 'ſaid Priſon ſhould then belong, in Perſon, 'or their ſufficient Deputy or Deputies, for 'whom they ſhould be anſwerable; and the 'Profits and Inheritance be ſequeſtered to 'make Satisfaction for Eſcapes, *&c.*

Appointment. The ſaid *Richard Mullens* is Leſſee of the ſaid Office for a certain Number of Years, determinable on his Death, and was admitted by the Court upon the ſaid Leaſe, and took an Oath of Office.

Duty. The Marſhal is to have the Cuſtody of the Priſon belonging to the ſaid Court, and of all the Priſoners committed to the ſaid Priſon; and he is to be anſwerable for the Eſcape of any Priſoner out of his Cuſtody; and by himſelf, or his Deputy, is to attend the Court during the ſitting thereof, and on the Chief Juſtice whenever his Lordſhip appears in his publick Capacity.

Deputy Marſhal. The Deputy Marſhal is Mr. *Thomas Owen.*

Appointment. He is verbally appointed by the ſaid Mr. *Mullens*, who is Grantee of the ſaid Office of Deputy Marſhal for Life.

Clerks of the Papers of the King's Bench *Priſon.* The Clerk of the Papers of the *King's Bench* Priſon is Mr. *Henry Brown.*

Appointment. He holds his Place for Life by Appointment in Writing under the Hands and Seals

of the Proprietors of the Inheritance of the ſaid Priſon.

Duty. He enters the Commitments of all Priſoners committed to the ſaid Priſon, and all Declarations, and other Charges delivered againſt them; as alſo the *Committiturs* of all Perſons charged in Execution; he enters and returns all Writs of *Habeas Corpus* directed to the Marſhal, and makes out all Copies of Cauſes and Certificates of Priſoners Detainer.

Chaplain. Chaplain of the *King's Bench* Priſon is the ſaid Mr. *Henry Brown.*

Appointment. He enjoys this Office for Life by Indenture under the Hands and Seals of the Proprietors of the Inheritance of the ſaid Priſon;

And executes the ſaid Office by the Reverend Dr. *William Friend*, at a yearly Salary of 10 *l.*

Clerk of the Day Rules. The Clerk of the Day Rules of the *King's Bench* Priſon is Mr. *John Chapman.*

Appointment. He holds this Office for Life by like Appointment, from the ſaid Proprietors.

Duty. He is to attend the ſaid Priſon in Term-Time, and draw up and ingroſs the Petitions of ſuch Priſoners as petition the Court for Day-Rules; and to carry or ſend them to *Weſtminſter* at the ſitting of the Court.

There are alſo two Turnkeys.

Tipſtaffs. The Four Tipſtaffs, one attending on each Judge of the Court.

They

They are appointed for Life by Writing under the Hands and Seals of the Proprietors of the Inheritance of the ſaid Priſon. *Appointment.*

Their Duty is to attend on their reſpective Judges conſtantly in Court, and at their Chambers, to execute the Warrants directed to them; and to take Charge of every Priſoner committed in Court, or by a Judge at his Chambers; and to deliver ſuch Priſoner to the Marſhal. *Duty.*

The Aſſociate and Marſhal for Trials by *Niſi Prius* in *London* and *Middleſex*, is Mr. *William Bigg*. *Aſſociate and Marſhal at* Niſi Prius *in* Lon. & Mid.

He is verbally appointed by the Chief Juſtice of the Court for the Time being. *Appointment.*

He is to attend the Chief Juſtice at all Trials in *London* and *Middleſex*; to enter the Cauſes ſet down to be tried; to enter *Ne Recipiaturs*; to receive the Records and Writs, and to mark them in Order of Precedence as they are brought in; to call the Cauſes, to receive or withdraw Records and Writs, and deliver out *Poſteas*, and to mark ſuch Records as are left untried. *Duty.*

The Clerk of *Niſi Prius* for Trials in *London* and *Middleſex* is Mr. *John Skinner*. *Clerk of* Niſi Prius *in* Lon. *and* Middleſ.

This Officer is verbally appointed by the Chief Juſtice of the Court for the Time being. *Appointment.*

His Duty is to attend the Sittings, to call the Jurors, and mark them ſworn on the Panel; and in Caſes of ſpecial Juries to mark the *Tales*, if there are any; to in- *Duty.*

dorſe on the Panel the Defaults of the Defendant's Appearance, and the Proclamations made on Informations and Indictments, and who appears to proſecute for the King, to read the Records; and all Deeds, and other written Evidence; to take Notes of Accounts, and of ſuch other Matters as the Lord Chief Juſtice ſhall direct; to take Minutes of every ſpecial Verdict, and draw up the ſame, and make Copies thereof; and to take all other Verdicts; to Indorſe all Verdicts, and to Record all Nonſuits upon the Panel; to draw up all Certificates to be ſigned by the Chief Juſtice; to take Minutes of all Orders made at *Niſi Prius*; to draw them up and make Copies thereof; and alſo to take all Recognizances entered into at ſuch Sittings; and ſince the late Act for the better regulating of Juries, he draws the Names of the Perſons returned to ſerve on Juries, marks the Names of the Perſons ſworn on the Panel; takes notice of the Names of the Defaulters, and their Fines for not appearing, and of Perſons excuſed or challenged.

Cryer at Niſi Prius *in* London *and* Middleſex.

The Cryer at *Niſi Prius* in *London* and *Middleſex* is Mr. *Robert Jones.*

Appointment.

This Officer is alſo verbally appointed by the Lord Chief Juſtice of the Court for the Time being.

Duty.

His Buſineſs is to attend the Court, and make the ſeveral Proclamations, and call and ſwear the Juries, to ſwear the Bailiffs, to prove

prove Service on ſuch of the Jurymen as are called, and do not attend; to ſwear the Witneſſes, and all other Perſons who are to be examined in Court, and to open and adjourn the Court.

Attornies of the Court.

Attornies ſhould procure themſelves to be admitted in ſome Inns of Court, and take Chambers there, or Lodgings near.

ATTORNIES ſhould procure themſelves to be admitted into ſome of the Inns of Court, or *Chancery*, and take Chambers there (if they may be had) or Lodgings near the ſaid Inns, and leave Notice in Writing with the Butler or Porter of the Inn whereof they are admitted, where their Lodgings are (except ſuch Perſons as are Inhabitants or Houſekeepers in *London*, *Weſtminſter*, *Southwark*, or the Suburbs thereof, and Liberty of the *Tower* of *London*, and St. *Katherine*'s there,) and ſuch who are ſworn Attornies of any Courts, within the ſaid Cities, Towns, and Liberties. *Mich.* 3 *Annæ.*

No one ſhall act as an Attorney of this Court, unleſs admitted purſuant to Stat. 2 Geo. 2.

No Perſon can Practice as an Attorney of this Court, unleſs he be ſworn, admitted and inrolled, purſuant to the Direction of the Act made 2 *Geo.* 2. for the better Regulation of Attornies and Solicitors.

None to be admitted, unleſs ſerved a Clerkſhip of 5 *Years.*

No Perſon ſhall act as Attorney, unleſs he ſhall have been bound by Contract in Writing to ſerve as a Clerk for five Years to an Attorney, duly admitted as by the Act is directed, and ſhall have continued for five Years in ſuch Service; and ſhall be examined,

examined, ſworn, admitted, and inrolled, as by the ſaid Act is directed.

If his Maſter dies in the five Years, may ſerve the Remainder of his Time with another.

If the Attorney, to whom ſuch Perſon ſhall be bound, ſhall happen to die before the Expiration of the five Years, or ſuch Contract ſhall by mutual Conſent be vacated, or ſuch Clerk be diſcharged by Rule of Court before the Expiration of the five Years, then ſuch Perſon ſhall by Contract in Writing ſerve as a Clerk to ſome other Attorney during the Reſidue of the ſaid five Years.

Attorney with Conſent of an Attorney of another Court may practice in ſuch Court.

An Attorney duly admitted in this Court may, with the Conſent in Writing of any Attorney of any other Court, practice as an Attorney in ſuch Court.

No Attorney to have more than two Clerks at one Time.

No Attorney ſhall have more than two Clerks at the ſame Time bound by Contract in Writing to ſerve him as Clerks.

Attornies to be inrolled.

Chief Clerk without Fee to inroll the Names of the Attornies admitted in alphabetical Order, whereto all Perſons may have Acceſs without Fee or Reward.

Attorney permitting one that is not an Attorney to practice in his Name, diſabled to practice.

An Attorney knowingly and willingly permitting any Perſon to practice in his Name, not being a ſworn Attorney, and being thereof lawfully convicted, ſhall from thenceforth be diſabled from Practiſing.

Penalty of Perſons practiſing, not being admitted.

Any Perſon in his own Name, or the Name of any other, practiſing as Attorney in Expectation of Gain, without being admitted

mitted and inrolled as aforeſaid, ſhall forfeit 50 *l.* to the Uſe of any who ſhall proſecute, and be made incapable to maintain any Suit or Fees for Diſburſements on Account of ſuch practiſing. Stat. 2 *Geo.* 2.

Cannot force an Attorney to act againſt his Will.

One cannot force an Attorney to be his Attorney againſt his Will.

One cannot retain an Attorney in a Cauſe where another was formerly retained, without Notice,

None ſhall retain an Attorney in a Cauſe wherein an Attorney is formerly retained, without firſt acquainting the Attorney that was firſt retained, or the Secondary in the Office.

Nor change Attorney without good Cauſe, and Leave of the Court.

One cannot change his Attorney in a Suit without good Cauſe, and the Leave of the Court.

Attorney to be paid his Fees before another permitted to proceed in the Cauſe.

The Attorney ought to be paid his Fees before any other Perſon ſhall be admitted to proceed in the Cauſe in which he was formerly retained as an Attorney, or he be compelled to deliver up his Client's Writings and Papers to ſuch new Attorney, or his Client.

If Attorney in a Cauſe die, the Attorney on the other ſide may proceed, if the Party whoſe Attorney is dead have Notice,

If the Attorney for the Plaintiff or the Defendant die, pending the Suit, and the Party whoſe Attorney is dead hath Notice given him of it, and will not retain another Attorney to proſecute for him, the Attorney for the other Party may proceed, and is not bound to hinder his Client's Cauſe for it,

The

Attornies in their common way of Practice to be governed by the Maſter.

The Attornies ought to be governed in the ordinary Manner of their Practice by the Maſter of the Office; and if any Difference ariſe between them, he is to hear both Parties, and to order the Matters in Difference between them, and they are to ſubmit to him; for the Court is not to be troubled but in extraordinary and difficult Matters of Proceeding.

Under-Sheriff ought not to practice as an Attorney.

No Underſheriff ought to be an Attorney; for it is often the Cauſe of increaſing of Suits, and alſo a Hindrance in Diſpatch of Clients Cauſes, by Reaſon of his double Capacity, and Intereſt and great Power he may have in the County where he is Underſheriff; it is alſo againſt the Statute 1 *H.* 5. 4.

Attorney abſenting himſelf from Court for a Year, loſes his Privilege.

If an Attorney abſents himſelf from the Court, and don't give his Attendance for a whole Year together, he loſes his Privilege. *Ridley* and *Carr.* Paſch. 1656.

He ſhall have his Privilege though he doth not practice.

An Attorney although he doth not practice, yet he ſhall have his Privilege ſo long as he continues an Attorney upon Record. *Lutw.* 1667.

Not to diſcover any Deeds ſhewn, or Letters, or Inſtructions.

An Attorney is not bound to diſcover and give in Evidence the Contents of a Deed ſhewed to him by his Client, nor any Letters received from his Client, nor any Inſtructions given him by his Client, unleſs he will.

Attornies paying 2 s. a Term may file Bills and Declarations, and ſearch Files gratis.

Attornies paying to the Clerk of the Declarations his Fee of 2 *s.* a Term may file Bills and Declarations, and inſpect and examine the Files without further Fee.

Of

Of the Four Terms.

THE Day three Weeks after *Michaelmas* Day, is the Eſſoin-Day of *Michaelmas* Term; and the fourth Day after inclusive, is the firſt Day of the Term, which is always the three and twentieth Day of *October*, if it be not *Sunday*, and if *Sunday*, the four and twentieth, and endeth on the eight and twentieth of *November*, if not *Sunday*, but if *Sunday* the nine and twentieth. Michaelmas Term.

Hilary Term begins the three and twentieth Day of *January*, if not *Sunday*, and then on the four and twentieth, and is always that Day eight Weeks on which *Michaelmas* Term ended; it's Eſſoin-Day is *January* the twentieth, and it ends the twelfth Day of *February*, if not *Sunday*, and then on the next Day, which always happens on the ſame Day of the Week on which *Michaelmas* Term begins. Hilary Term.

Eaſter Term begins the *Wedneſday* Fortnight after *Eaſter* Day, it's Eſſoin-Day being the *Sunday* before, but held on the *Monday*, and ends on *Monday* before *Whitſunday*. Eaſter Term.

Trinity Term begins the *Friday* after Trinity *Sunday*, although that Day ſhould happen to be on the twenty-fourth of *June*, for the Term muſt begin on the *Friday* next Trinity Term.

after *Corpus Chriſti* Day, by *Stat.* 32 *H.* 8. 21. And it's Eſſoin-Day is the *Monday* before, and ends on the *Wedneſday* Fort-night after the Term begins, unleſs it happens to be on the twenty-fourth of *June*, and then on the Day after, and the Term muſt be adjourned on the *Tueſday* to the *Thurſday* following.

Eſſoin-Day. The Eſſoin-Day from *Eſſoine*, or *Exonnie*, Excuſe, a kind of Imparlance, *Licentia Interloquendi*, or a Craving of longer Time, is regularly the firſt Day of Term, the fourth Day after is allowed of Favour: Tho' every Term is to be accounted in Law, but as one Day to many Purpoſes.

Michaelmas

Michaelmas Term contains five Weeks, and two Days, and has

Six Returns.

By ORIGINAL.	*By* BILL.
1. From the Day of St. *Michael* in three Weeks	On (*Monday*) next after three Weeks from the Day of St. *Michael*
2. From the Day of St. *Michael* in one Month	On ( ) next after one Month from the Day of St. *Michael*
3. On the Morrow of *All Souls*	On ( ) next after the Morrow of *All Souls*
4. On the Morrow of St. *Martin*	On ( ) next after the Morrow of St. *Martin*
5. On the Octave of St. *Martin*	On ( ) next after the Octave of St. *Martin*
6. From the Day of St. *Martin* in fifteen Days	On ( ) next after fifteen Days from the Day of St. *Martin*

Michaelmas Term contains five Weeks, and two Days, and hath Six Returns.

By ORIGINAL.	*By BILL.*
1. From the Day of St. *Michael* in three Weeks.	On (*Monday*) next after three Weeks from the Day of St. *Michael.*
2. From the Day of St. *Michael* in one Month.	On ( ) next after one Month from the Day of St. *Michael.*
3. On the Morrow of *All Souls.*	On ( ) next after the Morrow of *All Souls.*
4. On the Morrow of St. *Martin.*	On ( ) next after the Morrow of St. *Martin.*
5. On the Octave of St. *Martin.*	On ( ) next after the Octave of St. *Martin.*
6. From the Day of St. *Martin* in fifteen Days.	On ( ) next after fifteen Days from the Day of St. *Martin.*

Hilary

Hilary Term contains three compleat Weeks and hath four Returns.

1. On the Octave of St. *Hilary*.	On (	) next after the Octave of St. *Hilary*.
2. From the Day of St. *Hilary* in fifteen Days.	On (	) next after fifteen Days from the Day of St. *Hilary*.
3. On the Morrow of the Purification of the Bleſſed Virgin *Mary*.	On (	) next after the Morrow of the Purification of the Bleſſed Virgin *Mary*.
4. On the Octave of the Purification of the Bleſſed Virgin *Mary*.	On (	) next after the Octave of the Purification of the Bleſſed Virgin *Mary*.

Eaſter

Easter Term contains three Weeks and fix Days, and hath five Returns.

1. From the Day of *Easter* in fifteen Days.	On the	next after Fifteen Day from the Day of *Easter*.
2. From the Day of *Easter* in three Weeks.	On the	next after three Weeks from the Day of *Easter*.
3. From the Day of *Easter* in one Month.	On the	next after one Month from the Day of *Easter*.
4. From the Day of *Easter* in five Weeks.	On the	next after five Weeks from the Day of *Easter*.
5. On the Morrow of the Ascension of our Lord.	On the	next after the Morrow of the Ascension of our Lord.

D Trinity

Easter Term contains three Weeks and six Days, and hath five Returns.

1. From the Day of *Easter* in fifteen Days.	On (	) next after fifteen Days from the Day of *Easter*.
2. From the Day of *Easter* in three Weeks.	On (	) next after three Weeks from the Day of *Easter*.
3. From the Day of *Easter* in one Month.	On (	) next after one Month from the Day of *Easter*.
4. From the Day of *Easter* in five Weeks.	On (	) next after five Weeks from the Day of *Easter*.
5. On the Morrow of the Aſcenſion of our Lord.	On (	) next after the Morrow of the Aſcenſion of our Lord.

Trinity Term contains twenty Days, and hath four Returns.

1. On the Morrow of the Holy Trinity.	On (	) next after the Morrow of the Holy Trinity.
2. On the Octave of the Holy Trinity.	On (	) next after the Octave of the Holy Trinity.
3. From the Day of the Holy Trinity in fifteen Days.	On (	) next after fifteen Days from the Day of the Holy Trinity.
4. From the Day of the Holy Trinity in three Weeks.	On (	) next after three Weeks from the Day of the Holy Trinity.

In

In these Terms the following Days are [illegible]
Dies non Juridici: The first and second Days of *November* being *All Saints* and *All Souls*; in *Michaelmas* Term, the second Day of *January* being the Feast of the Circumcision; in *Hilary* Term, *Ascension-Day* in *Easter* Term, and the twenty-fourth Day of *June* being the Feast of *St. John* the Baptist, if it happens in *Trinity* Term, and Wednesdays in any of their Days are not good.

The eleventh Day of *November*, being *St. Martin's Day* in *Michaelmas* Term, cannot be said to be in or upon any Return, and if a Writ be made returnable on that Day, it need be returnable on *Tuesday* the Feast of *St. Martin*, or any other Day of the Week it falls on. And if returnable on Another, it need be on *Friday* the Morrow of *St. Martin*; so likewise the Morrow of *All Souls*, which is the third of *November*, and the Morrow of *St. Martin*, which is the twelfth of *November*, and Days of the Week otherwise; for if the Feast of *St. Hilary* fall on a *Monday*, the next Day is Judicial, and after the Morrow of *All Souls* and the next *Tuesday* will be Trinity St. Feast of *St. Martin*, and so yearly according to the Days of the Week on which the Feast of *St. Martin* happens.

In *Easter* Term all the Return Days of every Return are Judicial, except the Last, which is the Morrow of the Ascension, and Thursday before the Feast of *Trinity* Term, which is the Morrow of *Corpus Christi*.

In theſe Terms the following Days are *Dies non Juridici*: The firſt and ſecond Days of *November* being *All Saints* and *All Souls* in *Michaelmas* Term; the ſecond Day of *February* being the Feaſt of the Purification in *Hilary* Term, Aſcenſion-Day in *Eaſter* Term; and the twenty-fourth Day of *June* being the Feaſt of St. *John* the Baptiſt, if it happens in *Trinity* Term, and Writs returnable on any of theſe Days are not good. *Dies non Juridici.*

The eleventh Day of *November*, being St. *Martin*'s Day in *Michaelmas* Term, cannot be ſaid to be in or upon any Return; and if a Writ be made returnable on that Day, it muſt be returnable on *Thurſday* the Feaſt of St. *Martin*, or any other Day of the Week it falls on: And if returnable the Day after, it muſt be on *Friday* the Morrow of St. *Martin*; for between the Morrow of *All Souls*, which is the third of *November*, and the Morrow of St. *Martin*, which is the twelfth of *November*, one Day of the Week falls out twice; ſo that if the Morrow of *All Souls* falls on a *Monday*, the next Day is *Tueſday* next after the Morrow of *All Souls*, and the next *Tueſday* will be *Tueſday* the Feaſt of St. *Martin*, and ſo yearly, according to the Day of the Week on which the Feaſt of St. *Martin* happens. *Of the Feaſt of St.* Martin *in* Michaelmas *Term.* Sed vide *Stat.* 16 *Car.* 1. 6.

In *Eaſter* Term all the Eſſoin-Days of every Return are *Sundays*, except the laſt, which is the Morrow of the Aſcenſion; and ſo are all the Eſſoin-Days of *Trinity* Term, except the firſt, which is the Morrow of the Holy Trinity. *Eſſoin-Days in* Eaſter *and* Trinity *Terms.*

Proceſs by Bill returnable on a Day certain.

Every Bill of *Middleſex*, Writ of *Latitat*, *Alias Capias*, *Pluries Capias*, *Habeas Corpus*, *Super Cepi Corpus*, *Habeas Corpus ad faciend' & recipiend'*, and all other Proceſs thereupon, both before and after Judgment, muſt be returnable on a Day certain; as on *Monday* next after three Weeks from the Day of St. *Michael*, and may be returnable on an Eſſoin, or general Return-Day in the Term-Time; but then the Day of the Week muſt be expreſſed, as on *Friday* in one Month from the Day of St. *Michael*.

By Original on a general Return.

All Writs of *Capias*, *Alias* and *Pluries*, grounded upon Originals out of *Chancery*, and all Writs ſubſequent thereto, to the Outlawry, Writs of *Scire Facias*, *Quare Executionem*, *& ad audiendum Errores*; upon Writs of Error out of the *Common Pleas*, or other inferior Courts, Writs of *Capias ad Satisfaciendum*, *Fieri Facias*, and other Judicial Writs after Judgment affirmed, *Retorno Habendo*, *Capias in Withernam*, and all other Writs and Proceſs grounded upon any *Recordare facias Loquelam*, *Audita Querela*, *Accedas ad Curiam*, *Capias ſi Laicus*, and every other Judicial Writ out of *Chancery*, muſt not be made returnable on a certain Day, but on a general Return or Eſſoin-Day, *Ubicunque*, as from the Day of St. *Michael* in three weeks, whereſoever we ſhall then be in *England*. There muſt be fifteen Days between the Teſte and Return of ſuch Writs, except as follows,

Stat. 16 Car. 1.

By Statute 16 *Car.* 1. *c.* 6. It is provided, That all Writs and Proceſs in perſonal Actions having Day from *Tres Michaelis* until *Craſtino*

Bills of Middx, Latitats ffi: fa. & Ca: Sa. may be tested ye first Day of one Term and returnable ye last Return of ye next Succeeding term, but there must not be a clear whole Term between Test & Return as if a writ be tested in Hill & returnd in Trin. this is not allowed

Craſtino Animarum, ſhall be good and effectual in the Law, notwithſtanding there be not fifteen Days between the *Quarto Die poſt of Tres Michaelis*, and the Eſſoin-Day of *Craſtino Animarum*.

By the Statute of 13 *Car.* 2. *c.* 2. It is enacted, That in all perſonal Actions, and all Actions by Ejectment brought by Original, there ſhall not need to be fifteen Days between the Teſte and Return of any Writ or Writs of *Venire Facias*, *Habeas Corpora Juratorum*, or *Diſtringas Juratores*, *Fieri Facias*, and *Capias ad Satisfaciendum*, and that the Want thereof ſhall not be Error, except the *Ca. Sa.* whereon an Exigent after Judgment is to be awarded, or againſt the Defendant, to make the Bail liable. *Stat.* 13 Car. 2.

Of Writs.

THE uſual leading Proceſs where the Action is firſt commenced in this Court, and not by Original out of Chancery, and not brought from any other Court by *Writ of Error*, *Habeas Corpus*, or *Certiorari*, is a Bill of *Middleſex*; which you are to make out in this Form: *Leading Proceſs when by Bill.*

Middleſex, *to wit*, It is commanded to the Sheriff, That he take *William Cave*, and *Richard Roe*, if they may be found in *A Bill of* Middleſex.

Richard Roe, *or* John Doe,

are put in when there is but one Defendant, to make it agreeable to the printed Blanks, which are always in the Plural Number.

in his Bailiwick, and keep them ſafely, ſo that he may have their Bodies before the Lord the King at *Weſtminſter*, on *Monday* next after three Weeks from the Day of St. *Michael*, to anſwer *Ferdinando Hoare* in a Plea of Treſpaſs; and that he have there then this Precept,

By Bill,

Ventris.

Put the Attorney's Name, and the Day it was Signed, on the Back. Then write a Note for the Office thus;

This precipe will do for a Latitat Bill of M. by inſerting Sum ſworne to for an Action Bill is good on a precipe in Treſp only.

Middleſex, *to wit*, Bill for *F. H.* againſt + *W. C.* Treſpaſs, returnable on *Monday* after three Weeks, from the Day of St. *Michael*.

Robert Richardſon,
20th *October*, 1738.

not Sealed

You pay Six Pence in Term, and Ten Pence in Vacation, for Signing it.

If the Defendant is to be held to Bail, you add in the Precept, an *Actionem Billæ*, according to the Nature of the Caſe, as follows;

Debt.

As alſo to a Bill of the ſaid *F. H.* againſt the ſaid *W. C.* for One Hundred Pounds of Debt, according to the Cuſtom of the Court of the Lord the King, before the King himſelf to be exhibited.

As

Indorſe of Attorney's Name on ye Back of ye Writ.

If it be Bailable Indorſe of Sum ſworne by under the Attorneys Name thus "Bail for 40l. by Affidavit filed."

If it be a Qui Tam Action add at his mark [who sues as well for our said Sovereign Lord the King as for himself in this cause.]
Qui Tam Actions not Bailable except on ye Goldsmiths Act.

If Plts or Defts be Exors or Admrs. They must be so named in the Precipe and writ.

There can be only 4 Defts in a Bill of Middlesex or Latitat and but one Plte unless it be a Joint Cause of Action, such as Partners, Joint assignees or Obligees.

To save ye Statute of Limitations by a Bill of Middlesex and entry thereof on the Roll.

Make a Precipe for a Bill of Middlesex, Take out an Ac Etiam Bill of Middx thereon (without day) agst ye Defts & lay ye same damages in ye Ac Etiam as are to be in ye Writ. Get ye Bill of Middx returned by ye Sheriff with out Imprimt: who is pd for it 0-0-8. it must be left with ye Sheriff 4 days at least before ye Return or he will Scruple to return it. Get a Roll and Number put on ye same of ye Ac Etiam Bill of Middx is returned in from ye Filazby, Enter ye Bill of Middx on ye Roll as on ye other side pa. 39: Then make a Docket Paper thus viz.

The Entry of T. S. Gent one of the Attorneys of ye Court of Kings Bench of the Term of St. Hilary in the 20 Year of King Geo: the Second.

Middlesex (to wit) The Entry of a Bill of Middlesex Mitimus In: Ld. Plte & Lan. R. Defts in Trespass & alio in Custom pro mercibus &c for 30 upon promises - - - - } Roll.....

Carry this Docket paper & ye Roll and also ye Bill of Middx to ye Lawtroner & he takes ye Paper Docket & Enters it & marks ye Roll & Bill of Middx for which he is pd 1:6: Then Carry ye Bill of Middx to ye Filazby who files it for wch he is pd 0-4. Then Carry ye Roll with ye Tally to be filed who takes nothing if it be left with him before ye Essoin Day of ye Term next following ye Term wherein ye Roll is ent: Nb in Term time ye Tally takes Rolls at Westr in ye morning at ye Kings Bench office in ye afternoon, and out of Term he takes Rolls at his Chambers in Gray's Inn

Entry of a Bill of Middlesex on the Roll to have the Statute of Limitations vid: fo: 447. for Continuances &c

As yet of [x] Hilary Term with a Sir — William de Knight

x The Term in which the writ is returnable

Middlesex (to wit) our Lord the King hath commanded the Sheriff of Middlesex by his precept closed in these words (to wit) Middlesex to wit the Sheriff is commanded to take Laurence Rainbird and Richard Roe if they be found in his Bailiwick and that he keep them safely so that he may have their bodys before our Lord the King at Westminster on Friday next after eight days of Saint Hilary to answer to John Lloyd in a Plea of Trespass and also to a Bill of the said John against the said Laurence for xl. thirty pounds upon promises and undertakings according to the Custom of the Court of the Lord the King before the King himself to be exhibited and that he then have there this precept. by Bill. Anthony and Bigge. At which day before our Lord the King at Westminster came the aforesaid John by Thomas Shangways his attorney and offered himself against the said Laurence of the Plea and Bill aforesaid and the Sheriff of Middlesex (to wit) and Hath returned that the aforesaid Laurence is not found in his Bailiwick and he came not &c. Therefore &c

Nota at the very bottom of the Roll and the Nos Roll & Chief Clerks name the Roll. . . . Anthony and Bigge.

Middlesex relation and the writ.

The whole Damages in intended Roll & not the Roll but in equal sum Debt.

Note at any time after this entry the Deft is sued & pleads the Stat. of Limitations continuances on the roll at much [illegible] viz. " Therefore as before the Sheriff is commanded to take the said C. if &c. and that he keep him safely &c. So that he may have his body before our said Lord the King at Westminster on . . . . next after . . . . . (what doth mean) to answer the said J. of his Plea & Bill aforesaid. The same day was given to the said J. at the same place at which day before our said Lord the King at Westminster aforesaid came the said J. by his attorney & offered himself against the said C. of the plea & bill aforesaid & the said Sheriff did not return the said precept nor did he do any thing thereupon and the said C. came not. Therefore as before the said Sheriff is commanded to take the said C. &c. [et sic de cetteris to the writ on which Deft appeared making such continuance returnable on the first return of every succeeding term and Deft appeared on a Bill of Middlesex the last continuance to this " Therefore as before the Sheriff is commanded to take the said C. if &c. & that he keep him safely &c. So that he may have his body before our said Lord the King at Westminster on . . . . next after . . . . to answer the said J. of his Plea & Bill aforesaid the same day was given to the said J. at the same place at which day before our said Lord the King at Westminster aforesaid came as well the said J. by his attorney as the said C. by his attorney & appeared in the said Court &c. Deft appears on a Latitat the last Continuance to which thereupon and behalf of the said J. is put out of the said Court of the said Lord the King before the King himself and hence day is given sufficiently attended to the said Parties &c. Deft appears & denies & doth not himself in the County of M. Therefore the Sheriff of the County of M. aforesaid was commanded that he should take the said C. if he should be found in his Bailiwick & safely keep him so that he might have his body before the said Lord the King at Westminster on . . . . next after . . . . . next morning to answer unto the said J. of his plea & bill aforesaid and that he should have there then this writ. The same day was given to the said J. at the same place at which day before our said Lord the King at Westminster aforesaid came the said J. by his attorney and the said Sheriff of M. did not return the said writ nor did any thing thereon but the said C. by . . . . his attorney at the same day likewise came & in a certain Custody appeared at the Suit of the said J. in a plea & bill aforesaid.

See the Stat. in this Entry & Continuances vid: fo: 447. post.

Other Ac Etiams for unequal Debts

1. Case
2. Debt
3. Trover.

To Answ^r Severally Wm C. in a Plea of Trespass And also the Sev^rall Bills of W^m C ag^t Wm John for £20 upon promise. and ag^t Wm Robert for 30^li in Debt; and ag^t Wm Thomas for £20 converting & carrying away W Goods & Chattles of Wm C. to ye damage of W^m C 100^li according &c.

1
2
3

Precipe for ye above

I — (to wit) Latitat for C. D. ag^t I. H. for £20 upon promiss Robert. Bell for 30. in Debt. Thomas F. for converting & carrying away & of Goods & Chattels to ye damage of 100 Return^a &c.

oath ag^t R.B. for 20
ag^t T. G. for 20
I. H. for 15

If two Severally bound in a Bond.

To Answer Severally Wm C. in a Plea of Trespass &c. and also ye Sev^rall bills of Wm C. ag^t the said John and Charles for 40^li in Debt Sperately. Accordg &c.

or in a Note

To Answer Severally [ut supra] And also ye Sev^rall Bills of Wm C. ag^t Wm John & Charles for 40^li upon promiss Sperately according &c.

If 3 held to Bail & one not.

The Precipe. / L. — (to wit) Latitat for C. D. ag^t G. H. in Debt for 50 L. M. & S. F. for 50^li. on promiss Sperately. F. M.

In Trespass Returnable. &c

Oath. ag^t G. H. for 30
ag^t L. M. & S. F. for 60

Ac Etiam

To Answer Severally Wm C. D. in a plea of Trespass & also ye Sev^rall Bills of Wm C. ag^t Wm G. H. for 50 in Debt and ag^t Wm L. M. & S. F for 40^li upon promiss Sperately. Accordg &c.

As alſo to a Bill of the ſaid *F. H.* againſt the ſaid *W. C.* for 100 *l.* upon Promiſe, according to, *&c.* *Aſſumpſit.*

For taking and carrying away the Goods and Chattels of the ſaid *F. H.* to his Damage of 50 *l.* according to, *&c.* *Treſpaſs. for taking & carrying away Goods*

For detaining the Goods and Chattels of the ſaid *J. H.* to the Value of 60 *l.* according to, *&c.* *Detinue.*

For converting and diſpoſing of the Goods and Chattels of the ſaid *F. H.* to the Value of 40 *l.* *Trover.*

For Breach of Covenant to the Damage of the ſaid *F. H.* of 50 *l.* according to, *&c.* *Covenant.*

If there be ſeveral Defendants you ſay,

To anſwer ſeverally *C. D.* of a Plea of Treſpaſs, and alſo the ſeveral Bills of the ſaid *C. D.* againſt the ſaid *A. B.* for 50 *l.* upon Promiſe, and againſt the ſaid *E. F.* for 30 *l.* upon Promiſe, according to, *&c.* *Several Defendants.*

If the Defendant can't be taken on the firſt Precept, you make out an *Alias*, and if not on that, a *Pluries* Bill.

The Alias *Bill begins thus,*

Middleſex, to wit, It is commanded to the Sheriff, as it was before commanded to him, that he take, *&c.* Alias *Bill.*

The Pluries *Bill begins thus,*

Middleſex, to wit, It is commanded to the Sheriff, as it has been oftentimes commanded to him, that, *&c.* Pluries *Bill.*

Insert at ye bottom of ye precipe for ye Alias or Pluries, when ye origl. Bill of Middlesex issued

* If the Defendant lives in any Liberty, where the Sheriff of *Middlesex* may not enter, get the Sheriff to direct his Warrant to the Bailiff of that Liberty; and if the Bailiff of the Liberty does not execute it, you must get the Sheriff to return a *Mandavi Ballivo*; and then you make out a *Non Omittas* Bill of *Middlesex*, whereupon the Sheriff may enter the Liberty, and arrest the Defendant.

The Form of a Non Omittas *Bill.*

Non Omittas *Bill of* Middlesex.

Middlesex, *to wit*, It is commanded to the Sheriff, That he do not forbear by reason of any Liberty in his County; but that he take, &c. as before.

For each of these you make out a proper Note for the Office, and you pay for Signing the *Alias* and *Pluries* but Two Pence each, either in Term or Vacation; and for the *Non Omittas*, as on a first Bill.

If the Defendant lives in any other County than *Middlesex*, (except as after mentioned) you make out a *Latitat*, which is in Nature of a *Testatum* Bill of *Middlesex*.

The Form of a Latitat.

Latitat.

GEORGE the Second, by the Grace of God, King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, and so forth, To the Sheriffs of *London*, Greeting: Whereas, we lately commanded our Sheriff of *Middlesex*, That he

Non Omittas Bill of Middx

* If there be Occasion a Non Omittas may be Sued out without having a Comon Bill of Middx first, or without having any Return of Mandavi Ballivo.

The Sheriff will grant a Warr.t on a Non Omittas to any of his officers who may & will execute it, without applying to, or having any thing to do with y.e Bailiff of y.e Liberty.

a Person may be arrested in a Liberty (without a Non Omittas) by Suing out a Comon Bill of Middlesex or Latitat on which y.e Sheriff will issue his —— Mandate to y.e Bailiff of y.e Liberty, who is thereon to grant a Warr.t to Arrest y.e Deft, but this is not often done, because y.e Bailiff of y.e Liberty has it in his power to favour y.e Deft (if he happens to be his friend) by delaying to grant a Warr.t on y.e Sheriffs Mandate &c. Therefore a Non omittas is best.

If Deft be Served with a Copy or Arrested on a Bil of Middlesex or Latitat in one County Plt may Declare in any other County, and the Bail will not be discharged But in such Case ye Bail will be discharged if it be by Orig.^al or by Comon Re Plain Cap.^s in C. B. C not by Testatum.)

† If it be a Qui Tam Action say [to answer to ~~the Kg~~ C. D. who Sues as well for us as for himself in this behalf in a plea of Trespass]

Note that upon a Qui Tam in C. B. & Philazers insist for a Fine to be paid for ye Cursitors, but there is no fine in B. R.

he ſhould take *A. B.* if he might be found in his Bailiwick, and ſafely keep him, ſo that he might have his Body before us at *Weſtminſter*, at a certain Day now paſt, to anſwer *C. D.* in a Plea of Treſpaſs, * and alſo to a Bill of the ſaid *C. D.* againſt the ſaid *A. B.* for One Hundred Pounds upon Promiſe, according to the Cuſtom of our Court before us to be exhibited; and our ſaid Sheriff of *Middleſex* at that Day returned to us, That the ſaid *A. B.* was not found in his Bailiwick; whereupon on the Behalf of the aforeſaid *C. D.* it is ſufficiently teſtified in our Court before us, That the ſaid *A. B.* doth lurk and ſecret himſelf in your County: Therefore we command you, that you take him, if he ſhall be found in your Bailiwick, and ſafely keep, ſo that you may have his Body before us at *Weſtminſter*, on next after to anſwer the ſaid *C. D.* in the Plea [and Bill] aforeſaid; and have there then this Writ. Witneſs Sir *William Lee* Knight, at *Weſtminſter*, the Day of in the twelfth Year of our Reign.

Ventris.

* *Suit the Actiam Bill to the Nature of the Action as before directed,* ſo. 38. 39 *if the Defendant is to be held to Bail; otherwiſe you leave it out, Treſpaſs being ſufficient.*

† *Theſe words omitted if not Bailable.*

The Teſt of Latitat The

A Latitat may be teſted any day in Term that is a day in Bank Court But if usual way (in Term time) is to Teſt it ye firſt day of ye Term; But if in Vacation then to teſt is ye laſt day of ye preceding Term 2. Salk. 700.

The Note for the Office.

London, to wit, Latitat for *C. D.* againſt *A. B.* Treſpaſs, and alſo for 100 *l.* upon Promiſe.

Ret.

Anth. Beckwith.
20 *October* 1738.

If the Defendant is not to be found on the *Latitat*, you ſue out an *Alias Capias*; and if not on that, a *Pluries Capias*.

The Form of an Alias Capias.

Alias Capias.

GEORGE the Second, by the Grace of God, King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, and ſo forth, To the Sheriffs of *London*, Greeting: We command you, as we have before commanded you, that you take *A. B.* if he may be found in your Bailiwick, and ſafely keep him, ſo that you may have his Body before us at *Weſtminſter*, on next after to anſwer *C. D.* of a Plea of Treſpaſs, and alſo to a Bill of the ſaid *C. D.* againſt the ſaid *A. B.* for 100 *l.* upon Promiſe, according to the Cuſtom of our Court before us to be exhibited; and have there then this Writ. Witneſs Sir *William Lee* Knight at *Weſtminſter*, the Day of in the twelfth Year of our Reign.

Ventris.

The

Whit Bar ac. obiit } Entry of a Latitat on the Roll to save the Statute of Limitations.

As Got of Hilary Term with[s]s Sir William Lee Knight

Engrossed (to wit) The Lord the King hath sent to the Sheriff of Sussex his writ Close in these words (to wit) George by the Grace of God of Great Britain France and Ireland King Defender of the faith and so forth To the Sheriff of Sussex greeting whereas we lately commanded our Sheriff of Middlesex [and so on with the whole writ verbatim to the words] and have there then this writ witness Sr Wm Lee Knight the ... day of ... in the 20th year of our reign. Anthony and Bigge. At which day before our Lord the King at Westm. came the aft. P. [Pltf.] by S. S. his attorney & offered himself against the said D. [Deft.] of the Plea & Bill aft. and the Sheriff of Sussex (to wit) Hath returned that the aft. D. is not found in his Bailiwick & he came not and so forth

* go on from this mark in ye Alias in fo: 42. A non Omittas being always in ye form of an Alias (not of an Origin.) Latitat

The *Pluries Capias* is the ſame, only inſtead of the words, Pluries.

"As we have before commanded you;" ſay,

"As we have many times commanded you."

If the Sheriff cannot execute your *Latitat*, *Alias*, or *Pluries*, by Means of any Liberty he may not enter, upon the Return of a *Mandavi Ballivo*, as before, you make out a *Non Omittas*.

N. Non Omittas Latitat may be ſued out preſently if the be occaſion without any ſuch return. vid: fo: 40.

The Form of a Non Omittas.

GEORGE the Second, by the Grace of God, King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, and ſo forth, To the Sheriff of *Lincoln*, Greeting: We command you, that you do not forbear by reaſon of any Liberty in your County, but that you take *A. B. &c.* as aforeſaid. Non Omittas.

If Action be not Bailable & Deft lives in a Liberty make out a Comon Non Omittas without an Alias Etiam.

The Bailie will take 1: 2 for Bailing if he ſees he a Non omittas

In each of theſe Caſes you make out a proper Note for the Office in manner before directed; you pay 2 *s.* 6 *d.* for Signing the *Latitat*, whereof 1 *s.* 10 *d.* is for the chief Clerk, and two a-piece to each of the four Judges, and 7 *d.* for the Seal; you pay nothing for Signing either the *Alias*, *Pluries*, or *Non Omittas*.

A *Latitat* is not in Force in *Wales*, nor in a County Palatine, nor in the Cinque Ports, or their Dependencies; as *Romney*, *Haſtings*, *Feverſham*, &c. Yet it is ſaid a ſpecial *Latitat*

titat in the enſuing Form, may be executed in a County Palatine.

Latitat *to a County* Palatine.

None to be held to Bail in Actions in Courts Palatine without an affid.t of Cause of Action of 20l. or upwards by 11 & 12. W. 3. c. 9 which is still in force.

GEORGE the Second, by the Grace of God, King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, and ſo forth, To our Chamberlain of our County Palatine of *Cheſter*, or to his Deputy there, Greeting: Whereas we lately commanded our Sheriff of *Middleſex*, (as in other *Latitats*) We therefore command you, That by our Writ under the Seal of our ſaid County Palatine, in due Form to be made out, and to be directed to the Sheriff of the County of *Cheſter*, you cauſe it to be given in Charge to the ſaid Sheriff, that he take the ſaid *A. B.* if he may be found in his Bailiwick, *&c.*

No Acetiam *Writ againſt an Heir, Executor, or Adminiſtrator.*

No Writ with the Clauſe of *Acetiam* is to be ſued forth againſt any Heir, Executor or Adminiſtrator, ſo as to oblige him to put in ſpecial Bail. *Mich.* 15 *Car.* 2.

Affidavit to be made of the Cauſe of Action, if 10l. *or upwards.*

In all Caſes where the Cauſe of Action amounts to ten Pounds or upwards, and the Plaintiff would compel the Defendant to give ſpecial Bail, Affidavit is to be made and filed of the Cauſe of Action, and the Sum or Sums ſpecified in ſuch Affidavit muſt be indorſed on the Back of the Writ or Proceſs. And the Sum or Sums ſo indorſed, the Sheriff, or other Officer, to whom ſuch Writ or Proceſs is directed, ſhall take Bail for, and for no more.

It is ſaid y.t by 12. G. 1. a Man can be held to Bail, ſo y.t Debt & Caſe &c. cant be joined together to make up 10l. in order to hold to Bail, or if a Man make oath of a Debt of above 10l. on a Bond & alſo of an.t Debt under 10l. on promiſe &c. from y.t ſame Perſ.t, it is ſaid y.t it is not Safe to Lawyer hold Perſ.t to Bail for y.t Debt under 10l. If Cauſe of Action be of diverſe Natures as Debt & Trespaſs, or Debt & Legacy &c. tho they be of one Nature, yet they cannot be joined to.r in one Action. Skep. 16. 17 Ed. 2. if they may not be joi[ned]

But Sev.ll Causes of Action may be contained in one action, if they are of one Nature as Debt & Detinue &c. may be joined, & a Plea may in one action have Visdos & Trespasses done at diverse times & Pleads [in one County] and diverse assumpsits in diverse Counties for yt. is not Local as Trespass is Shep. 16.

There may be four Defts in a Latt. [one more] but there can be but one Plts unless it is on a joint action. Shep. 16. 5.1c

a Man Court by one & yt Leave action bro. ant. for a debt due to him as Exr. & for a debt due to him in his own right or for 2 debts coming to him by 2 different Titles as Exr. to one Man & ad. to an. Yt but must have Seperate actions, tho it is true Hobarts rep.t 88

So a Defft can not be sued in one action for one thing as Exr. by reason of yr buying of yr Test.r & for other things of his own buying, for Defft is to be charged in two Mannors. Shep. 16 . And it is there likewise said that it is not good in one action altho. Plts declares, yt upon an Acc.t yr Test.r being found in debt to him there have promised him payt. . Ibid.m. Hobarts rep.t 88

If a Bond promiss or Contract be made by 2 or more jointly & not Severally not one any of them may be sued without yr rest, but altogether Shep. 10. 11. 6.th Rep.t 59 unless in some Cases, as where one of yr Partys is an Infant, some Covert &c. or where one of them is dead ~ Shep. 10. or where one of yr Partys is outlawed, then yr Party may recover agt. yr other or yr rest Ibid.m ~ Hattons rep.t 26.

and in yr Case case, if one Joint Defft is sued without yr other, he is not bound to answer without yr other is sued; but if he does he must take advantage & must plead in abatemt. to yr writ, for if he appears and pleads, non est factum, non assumpsit or yr like the Jury must find agt. him, yr other being joined in that fact, & he will be chargeable with yr whole debt, for where one joint Defft is sued & yr other is omitted, yr Court will intend him yt. is omitted dead, untill it is shewn to yr Contrary. Shep. 10.

Note. But if [many] do a trespass, one or any, may be sued alone Ibid.m fo. 11

If a Promiss is made to two or More, no one of them can sue alone, whilst yr rest live but must be altogether & be joint Plts, unless one of them be outlawed or yr like. Ibid.m

It is said on a joint & Seperate Bond yr Obligor may sue yr Defts in one action or by Seperate actions, but may not sue one & Spare yr other Ibid.m fo: 10. Pod 2.d 5.th Rul part

Joint Defts may plead Sev.l pleas in Bar, but must join in Tryals. Hattons Rep.t 26.

* And this affid.t may be taken before Ld. Comm.r who is imployed as Attorney to find out a Process thereon. Costs 15. fi. fa.
But any other affid.t cant be taken before Ld Comm.r who is Gen.l Attorney in Gen.l Cause. Ibid.m except it be of Service of Subp.na of Piscmus.

more. 12 *Geo.* 1. *continued* for ſeven Years by 5 *Geo.* 2.

The Form of an Affidavit to hold to Bail.

King's Bench.

Samuel Anderſon
againſt
Jeremiah Waring.

Samuel Anderſon of, &c. maketh Oath, That the Defendant *Jeremiah Waring* is juſtly and truly indebted to this Deponent in the Sum of fifty Pounds for Goods ſold and delivered, by this Deponent, to the ſaid *Jeremiah Waring*. *Affidavit to hold to Bail.*

Samuel Anderſon.

Sworn the Day of
before

✱ This Affidavit may be made before any Judge of the Court, or Commiſſioner, authorized to take Affidavits in this Court; or before the Officer who iſſues the Writ or Proceſs, or his Deputy, for which only one Shilling is to be paid: And ſuch Affidavit is to be Filed with the ſaid Officer, or his Deputy. *Before whom to be made.*

Where the Cauſe of Action does not amount to ten Pounds or upwards, no ſpecial Writ or Proceſs, ſpecially therein expreſſing the Cauſe or Cauſes of Action, ſhall be ſued forth or iſſued, in order to compel any Perſon to appear thereto; and if any ſuch be ſued *No ſpecial Writ where Cauſe of Action under* 10 *l.*

ſued forth, the Proceedings and Judgment thereon ſhall be void, and the Attorney or Officer of the Court, ſuing forth or iſſuing the ſame, ſhall forfeit ten Pounds to the Perſon or Perſons aggrieved thereby. 5 *Geo.* 2.

The Day and Year of Signing Proceſs, to be ſet down on ſuch Proceſs.

Every Officer or Clerk of the Court, who ſhall ſign any Writ or Proceſs before Judgment for the arreſting any Perſon is at the Signing thereof, to ſet down on ſuch Writ or Proceſs, the Day and Year of his Signing the ſame, which ſhall be entered in the Remembrance, or Book, where the Abſtract of ſuch Writ or Proceſs ſhall be entered, upon Pain of forfeiting ten Pounds for every ſuch Neglect, to be recovered by any Perſon who will ſue for the ſame. 5 & 6 *W.* & *M. c.* 21. and 9 & 10 *W.* 3.

The Name of Attorney to be written on every Writ.

Every Writ or Proceſs for arreſting the Body, and every Writ of Execution, and every Warrant which ſhall be made out upon any ſuch Writ, Proceſs, or Execution, ſhall, before the Service or Executing thereof, be Subſcribed or Indorſed with the Name of the Attorney who ſues forth the ſame; and where ſuch Attorney is not the Perſon immediately retained or employed by the Plaintiff, then alſo with the Name of the Attorney ſo immediately retained or employed; and every Copy of any Writ or Proceſs that ſhall be ſerved upon any Defendant, ſhall, before the Service thereof, in like manner be Subſcribed or Indorſed with the Name of the Attorney, who ſhall be immediately retained

tained or employed by the Plaintiff. *Stat.* 2. *Geo.* 2. for regulating Attornies, *&c.*

If any Defendant ſhall be legally delivered from any Arreſt upon Meſne Proceſs, he ſhall not be again arreſted at the ſame Time by Virtue of any other Proceſs at the Suit of the ſame Plaintiff, upon Pain that every Attorney acting to the contrary, ſhall be put out of the Roll, and the Plaintiff and Attorney ſhall be further puniſhed as the Court ſhall think fit. *Mich.* 15 *Car.* 2. *Defendant diſcharged from Arreſt ſhall not be Arreſted again at the ſame Time, at the ſame Plaintiff's Suit.*

Where the Cauſe of Action does not amount to ten Pounds or upwards, the Defendant ſhall not be arreſted, but be ſerved perſonally with the Copy of the Proceſs. *Stat.* 12 *Geo.* 1. *Copy of Proceſs to be ſerved, if Cauſe of Action under* 10 l.

Upon every Copy of ſuch Proceſs ſo ſerved on any Defendant, there ſhall be written an *Engliſh* Notice to the Defendant of the Intent and Meaning of ſuch Service to the Effect following, *viz.* Engliſh *Notice on ſuch Copy:*

A. B. You are ſerved with this Proceſs to the Intent, That you may by your Attorney appear in his Majeſty's Court of *King's Bench* at the Return thereof, being the Day of in order to your Defence in this Action. *Form of it.*

No Attorney, Bailiff, or other Perſon, ſhall take or demand more than five Shillings, for making and ſerving a Copy of ſuch Proceſs. 5 *Geo.* 2. *Five Shillings for making and ſerving ſuch Copy.*

The

The Form of a Common Bail-Piece.

Common Bail.

Michaelmas Term in the Twelfth Year of King *George* the Second.

Middlesex *(to wit)* A. B. *is Delivered on Bail, upon a* Cepi Corpus.

To John Doe *of* London, *Gent.*
and
Richard Roe *of the same, Gent.*

Robert Richardson, *Attorney for Defendant.* } *At the Suit of* C. D.

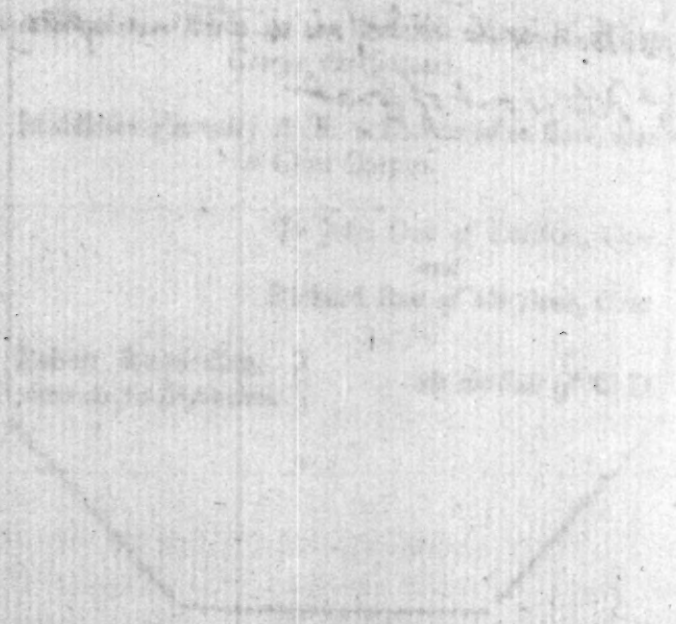
This is written on a Piece of Parchment of the above Form, on a double Sixpenny Stamp; you pay the Clerk of the Common Bails for filing this, 1 *s.* 2 *d.* if filed within the Term, or six Days after; otherwise you pay him four Pence more as a *Post Terminum.* but you don't pay him another Post Term fee for vacation of the subsequent Term

If Defendant do not file Common Bail, Plaintiff may on Affidavit of Service.

Where the Cause of Action does not amount to ten Pounds or upwards, and the Defendant is served with a Copy of the Process, and doth not appear at the Return, or within eight Days after the Return thereof, the Plaintiff upon making and filing an Affidavit of the personal Service of the Process, may file Common Bail for the Defendant, and proceed

You File a Comon Bail pcio as of ye Same term the writ is returnable altho' it be filed 3 terms after y^e term y^e writ is returnable in.

If Ptfs attorny dont file comon Bail for Deft's attorny's neglecting to to do in 4 terms after y^e writ is returnable y^e Ptfs is out of Court



If a Process or writ of Latitat appearing to this Dept. to be issued out of ye under ye Seal of this Honble Court agt the Said Deft at the Suit of the Said Pltf and returnable on [illegible] next after 8 days of St Hilary by delivering to him ye Said Deft a true Copy of the Said Process or writ of Latitat and at the Same time Shewed ye Said Deft ye Said Original Process or writ of Latitat under Seal issuing out of this Honble Court as aforesd upon ye Said Copy of the Said process or writ So as aforesd Served by this Dept on ye Said Deft was written or Subscribed an English Notice Signifying the intent & meaning of Such Service as by the Act of Parliamt in yt case is required.

proceed as if Common Bail had been filed by the Defendant. This Affidavit may be made before any Judge or Commiſſioner of this Court, authoriſed to take Affidavits, or before the Clerk of the Common Bails, and is to be filed *gratis*.

The Form of the Affidavit.

King's Bench. *C. D.* againſt *A. B.*

Affidavit.

E. F. Of, &c. Gentleman, maketh Oath, That he, this Deponent, did on the Day of at in the County of perſonally ſerve the Defendant *A. B.* with the Writ or Proceſs hereunto annexed, by * ſhewing him the ſaid annexed Writ or Proceſs, and at the ſame time delivering to him a true Copy thereof, on which Copy was ſuch *Engliſh* Notice in Writing, of the Intent and Meaning of ſuch Service, as by the Act in that Caſe is required.

* *This, though not expreſſly directed by the Act, ſeems a neceſſary part of the Service.*

Sworn, &c.

E. F.

If Common Bail filed by Plaintiff, to be ſo marked on Bail-Piece.

In all Caſes where Common Bail ſhall be filed by the Plaintiff for the Defendant, by Virtue of the late *Act for preventing frivolous and vexatious Arreſts*: Theſe Words ſhall be written on the Bail-Piece, *viz.* [*filed according to the Statute*] or, Words to the like Effect. *Mich.* 10 *Geo.* 2.

Attorney who appears is to file Common Bail, and give Notice.

Every Attorney, who ſhall appear for any Defendant in any Action in which Bail is not required, ſhall duly file Common Bail for ſuch Defendant, of the Term of which he appears, and give Notice thereof to the Plaintiff, or to his Attorney.

Attorney ſhall not be compelled to file Common Bail, unleſs undertaken in Writing.

No Attorney ſhall be compelled to appear or file Common Bail for any Defendant in this Court, unleſs ſuch Attorney hath by a Note in Writing undertaken ſo to do, and ſuch Note be produced by the Plaintiff's Attorney; but, if any Attorney hath accepted a Warrant to appear for the Defendant, (which Warrant ſhall in no wiſe be revoked) or hath ſubſcribed the ſame, and does not file common Bail accordingly, ſuch Attorney ſhall be compelled to file common Bail of the proper Term, and receive a Declaration, and Plead thereto; and in Default of Pleading Judgment may be entered by Default (a Rule to plead having been firſt entered); for the Neglect of the Defendant, or his Attorney, ſhall not tend to the Plaintiff's Prejudice.

Wife to be diſcharged on filing Common Bail for herſelf only.

If a Writ be ſued out againſt the Huſband and Wife, and the Wife only be arreſted and detained in Cuſtody, ſhe ſhall not be compelled to put in Bail for her Huſband, but ſhall file common Bail for herſelf, and have her *Superſedeas* to diſcharge her.

Common Bail to be filed on Judgment by Confeſſion.

Where Judgment is confeſſed by Warrant of Attorney, common Bail ought to be filed for the Defendant, on Pain of forfeiting 10*s.* to the Box. *Hil.* 1 *W. & M.*

If

* by 23d. H. 6. ch. 10. Shreiff is obliged to take a Bail bond in his own Name if Bailable for Deft appear only at ye return of writ on Defts demand. it ℞ offering 2 Suff.t Sureties residing in ye County

after ye time for putting in Bail above is expired Plte may at any time take an assignem.t of ye Bail bond without Searching ye Judges Book whether any Bail is put in or not, for if any Bail is put in Deft ought to give plte notice of it, but aliter in Q. B.
Deft may put in Bail above at any time after ye time expired so y.t ye Bail bond is not assigned. But tis apprehended y.t if after ye Deft hath put in Bail before notice thereof is given Plte takes an assignem.t of Bail bond, & the Deft is too late with his bail to save ye Expence of ye assignem.t &c.

© When you sue ye Bail on any Recognizance of Bail you add in ye writ after the words (in a plea of Trespass) as follows viz.t (and also to a Bill of the said, Plte against ye.d Deft, (in a plea of debt upon recognizance according to the custom of our Court before us to be exhibited.) otherwise ye Deft or their attorny are not bound to accept of a Declar.n Statute 16. G. 2. Regula But this does not extend to ass.t Actions on assignem.ts of Bail Bonds. But upon ye Recognizance viz.t Bail pone

If the Defendant ſhall voluntarily appear at the Suit of any Plaintiff in any Action here in Court, ſuch Appearance ſhall be of no Effect, unleſs ſome Proceſs be ſued out within fourteen Days next after ſuch Appearance. *Trin. 4 W. & M.*

Voluntary Appearance invalid, unleſs Proceſs ſued out in 14 Days.

* If the Action be for Special Bail, and the Defendant be arreſted, he uſually gives a Bail-Bond to the Sheriff; which if forfeited, the Sheriff may aſſign to the Plaintiff, for which you pay 5 *s.* *viz.* for the Aſſignment 2 *s.* 4 *d.* for the Plaintiff's Diſcharge for the ſame 2 *s.* 4 *d.* for the Return of the Writ 4 *d.* This in *Middleſex*; in other Counties they differ, but not much.

Bail-Bond aſſignable.

4 & 5 Ann. ch. 16.

You may then bring an Action againſt the Obligors in the Bond in your own Name, but cannot have Special Bail, for that would be Bail *ad infinitum.* Take Care before you take the Aſſignment, that the Bail in the Bail-Bond be ſufficient, for the Sheriff is not anſwerable afterwards, as I apprehend.

Action againſt Bail.

No Bail-Bond ſhall be put in Suit till four Days excluſive after the Return of the Writ, if the Arreſt be in *London* or *Middleſex*; and till ſix Days after the Return of the Writ, if the Arreſt be in any other County. *Mich. 8 Annæ.* 4 Same time allowed to put in good bail. Ibid.

When Bail-Bond may be put in Suit.

6 days exclusive of both

8 inclusive of both

No Action ſhall be brought upon Aſſignment of a Bail-Bond till the Aſſignment be firſt ſtamped. *4 & 5 Ann. c. 16*

No Action before Aſſignment be ſtamped.

Every Bail-Bond ought to be in a Penalty double the Sum ſworn to, and indorſed on the Proceſs, on which the Defendant was arreſted.

Bail-Bond to be in double the Sum ſworn to.

12. G. 1. ch. 29. Sheriffs ſhall take Bail for no more than is endorsed on ye Writ; but ye practice is to double ye Sum in ye Bill, as in other Bonds, as is abovemen

Terms on which the Court will ſtay Proceedings.

If the Bail-Bond be put in Suit, the Court on Application will ſtay the Proceedings, upon putting in good Bail, paying the Coſts, receiving a Declaration in the original Action, pleading to Iſſue, and taking ſhort Notice of Trial, ſo that the Iſſue may be tried the ſame Term; but if the Plaintiff has loſt a Trial, the Court will require further, that the Bail ſhould conſent to have a Judgment entered againſt them upon the Bail-Bond for the Plaintiff's Security. And if the Plaintiff might have had Judgment againſt the Defendant in the original Action, in caſe Bail had been put in in Time, the Court in ſuch Caſe will not Stay the Proceedings on the Bail-Bond.

Special

Spetial Bail in ye Kings Bench is taken before a Judge at his Chambers (if a Town cause) or a Comissioner if in ye County

Spetial Bail Peices acknowledged or taken before a Judge to be of ye Form on ye other side

The Method of putting in Spetial Bail before a Judge is Draw a Bail peice as on the other side on double 12 penny Stampt parchment wch with ye Bail therein mencd you carry before one of ye Judges of ye Kings Bench before whom ye Bail undertake yt if Deft be condemned in ye action the will pay ye Condemnation money & Costs or render himself to ye Marshalsea or they will pay it for him wch ye other side

NB. The Bail Do not Sign ye Bail peice. ye Hon pay Judges Cl. 4s. in Term and 5s. in ye vacation

This Bail peice is deliv'd with ye Judges Clerk before whom &c. Whereupon Defts Attorny is forthwith to give Notice in writing unto Pltfs Attorny to this effect viz. A: B.

Between C: D: Pltf
and E: F: Deft

Take Notice That C: B. of Cheapside London Mercer and G: F. of Shoreditch Gentn wch were this day put in as Bail for ye Deft in this Cause before the Justice of the Chapple

Yours &c. F. S. Attorny for ye Deft
C: D: 20 July 1740

after wch Notice Pltfs Attorny has 20 days to Except to ye Bail, which Exception must be entred in ye Bail book at ye Judges Chambers in this manner viz.

I Do Except to this agnst this Bail
20. July 1740. F: S. Attorny for ye Pltf

of which Exception Notice in writing must be given to Defts Attorny as follows viz.

In the Kings Bench. C: D: Pltf and E: F: Deft

To Mr Notice That I have this day Excepted agt ye Bail put in above for ye Deft in this Cause dated 25th July 1740 Yours &c. A. S. Attorny for ye Pltf

after such Notice Deft shall procure his Bail to Justify in open Court or shall put in others who shall justify in Court within 4 days exclusive from Notice of Exon. if in Term, or on ye first day of ye following Term if in vacation 2. 5. 6: 2. vid ye rule fo: 57.

Deft Attorny must give Pltfs Attorny Notice of Justifying as in ye Comon Pleas

The Manner of Justifying is, you get ye Judges Cl. before whom ye Bail was taken to bring ye Bail peice into ye Court for wch you pay him 2: 6. when ye Bail will also must attend to Justify on oath. The Bail peice remains at Judges Chambers till Bail perfected, & if perfected before Judge at his Chambers pay in Term 1. in vac. 2. each person.

Expence of Justifying Bail & Bail peice & notice of Justifying — 8-10-0

Bail perfected — 1-2-6

Pltfs Attorny does not Except in 20 days Deft Attorny may take ye Bail peice & Bail Bond & file it &c.

Special Bail is written in Parchment in the following Form on a double Twelfpenny Stamp. *Special Bail.*

* Form of Writ of Cap. ad respondendum upon a Habeas Corpus. v. 171.

Michaelmas Term in the Twelfth Year of King *George* the Second.

London *(to wit)* A. B. *is Delivered on Bail, upon a* * Cepi Corpus. *

To C. D. *of* Cheapside, London, *Mercer, and* E. F. *of* Fleet-ſtreet, London, *Gent.*

{ *Naming the Bail, with their Places of Abode and Additions.* }

J. K. *Attorney.*

At the Suit of G. H.

If an Action be brought on this recognizance vid the rule of Easter 16. Geo: 2d.

for a Special Bail piece taken in a Country vid fo: 55.

NB. there is no Caption to a Special Bail piece taken before a Judge, nor Signed by the Bail. Bail need not reside in a County wherein &c.

At the taking the Recognizance the Condition is expreſſed to the Bail as follows: *The Condition of the Recognizance.*

You do jointly and ſeverally Undertake, that if the Defendant *A. B.* ſhall be condemned in this Action at the Suit of the Plaintiff *G. H.* he ſhall ſatisfy the Coſts and Condemnation, or render himſelf into the Cuſtody of the Marſhal of the *Marſhelſea* of the Court, or you will pay the Coſts and Condemnation for him.

See for Bail on *Habeas Corpus*, Proceedings by Original, and Writ of Error, under thoſe Heads. *Hab. Cor.* 171.

NB an Action of Debt may be brot agt. ye Bail alone on this Recognizance but then ye writ whereon such action is brot must be an Ac Etiam as in fo: 51. a Copy whereof must be Served.

Four Days to put in Bail in London *and* Middlesex, *and six Days in any other County.*

If the Defendant be arrested in *London* or *Middlesex* by Process out of this Court, and gives a Bail-Bond for his Appearance at the Return of the Process, he has four Days after the Return to put in Special Bail; and if arrested in any other County, he has six Days, and in the mean Time no Proceedings ought to be upon the Bail-Bond. *Mich.* 8 *Annæ.*

6. Exclusive of both of 8. Inclusive of both.

Days in this Court reckoned exclusive.

The Rule does not express whether the four Days and six Days are to be inclusive or exclusive of the Day of the Return of the Process; and in like manner it is not ascertained in any of the Rules of the Court, which require a Matter to be done or not to be done within so many Days, how the Days are to be reckoned, whether inclusively or exclusively; but the Practice in almost all Cases, is to reckon the Days exclusive; as in the *Common Pleas*, they are reckoned inclusive, and so the eight Days, which the Defendant has by the late Act to appear after the Return of the Process are in this Court counted exclusive, in that Court inclusive of the Day of the Return of the Process; which Difference in reckoning is in the short Terms, a Means of gaining the Term, and gives the Suitor in the one Court an Advantage which the Suitor in the other has not.

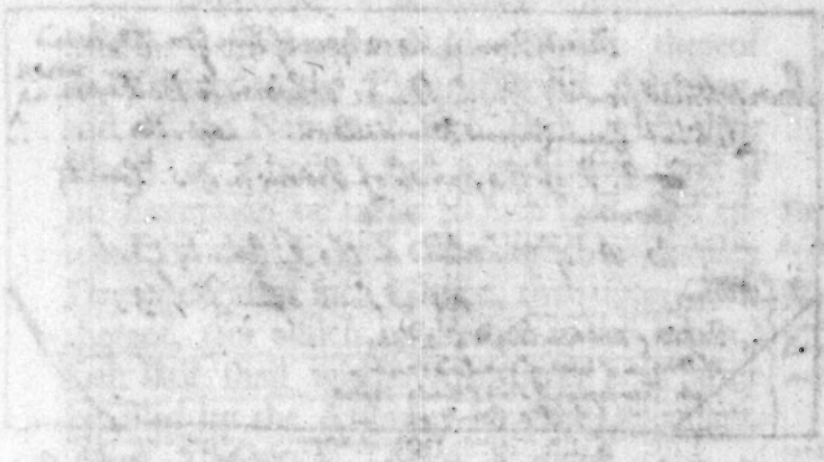
In the Common Pleas *inclusive.*

Sunday, if the last Day, not to be counted.

If the fourth or fifth Day happens to fall on a *Sunday*, the Defendant has *Monday* the fifth or seventh Day to put in his Bail.

Notice of Bail in Writing.

Where Special Bail is put in *de bene esse*, before any Judge or Commissioner, the Defendant



Four Days to put in Bail in London *and* Middlesex, *and six Days in any other County.*

If the Defendant be arrested in *London* or *Middlesex* by Process out of this Court, and gives a Bail-Bond for his Appearance at the Return of the Process, he has four Days after the Return to put in Special Bail; and if arrested in any other County, he has six Days, and in the mean Time no Proceedings ought to be upon the Bail-Bond. *Mich.* 8 *Annæ.*

6. Exclusive of both or 8. Inclusive of both.

Days in this Court reckoned exclusive.

The Rule does not express whether the four Days and six Days are to be inclusive or exclusive of the Day of the Return of the Process; and in like manner it is not ascertained in any of the Rules of the Court, which require a Matter to be done or not to be done within so many Days, how the Days are to be reckoned, whether inclusively or exclusively; but the Practice in almost all Cases, is to reckon the Days exclusive; as in the *Common Pleas*, they are reckoned inclusive, and so the eight Days, which the Defendant has by the late Act to appear after the Return of the Process are in this Court counted exclusive, in that Court inclusive of the Day of the Return of the Process; which Difference in reckoning is in the short Terms, a Means of gaining the Term, and gives the Suitor in the one Court an Advantage which the Suitor in the other has not.

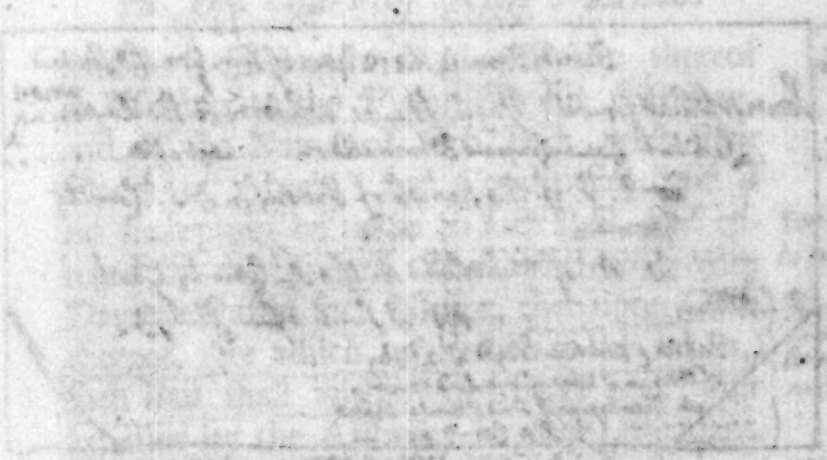
In the Common Pleas *inclusive.*

Sunday, if the last Day, not to be counted.

If the fourth or fifth Day happens to fall on a *Sunday*, the Defendant has *Monday* the fifth or seventh Day to put in his Bail.

Notice of Bail in Writing.

Where Special Bail is put in *de bene esse*, before any Judge or Commissioner, the Defendant



A Special Bail peice taken in the Country

on double 12 pay 5s.

The Affid.t in fo: 55. to be annext thereto

NB. The Bail do not sign this Bail peice

Trinity Term in the 12 Year of King Geo. the Second

Somersetshire (to wit) Hugh. B— is delivered to Bail upon an arrest Latitat Capi Cogenz Returnable on.... next after.....

The Q: F. of the parish of Froom in the S.d County Yeoman and

W.: A. of Minehead in the S.d County Gent

at the Suit of J: B.

J: S. Attorney

Taken & acknowledged the 2.d day of May in the Year of our Lord 1740 at Taunton in the said County before J: S. a Comr. &c. —

NB. The Chief and one of the Puisne Judges of each resp. Court of K: B. C: B. & Exchq.r may appoint Comrs in every County of England to take Bail in their resp. Courts which Bail are to Justifye [if excepted to] by affid.t & are not compellable to appear in Court in person to Justifye Unless they live in London or Westm.r or within 10 Miles of London or Westm.r. 4. W.m & M. c. 14

The Comrs for taking Bail shall keep Books for Entring the Names of the Deft & his Bail & of the Plto as it is in the Bail peice & of the time of taking thereof & the Attorneys name of the Deft's Attorney

Some person that saw the Bail taken must make an affid.t thereof the form whereof vide on the other Side

The Bail are also (usually at the same time) to make an affid.t that they are Housekeepers in such a place & worth double the Sum mentioned in the writ Tho' they may be in readiness to Justifye by it in Court if excepted ag.t when it must be filed & read in Court, the form whereof vide fo: 96

The Bail peice being Transmitted to Town to the Pltfs Agent w.th the above Affid.t he sues out of the same Office of the Clerk taking of Bail the Bail peice with the annexed affid.t of the due taking of the Bail (but not the affid.t of the Bail which is to be kept by you till exception) to one of the Judges of the K: B. to be allowed & leaves it with his Clerk who is paid 4s. if Bail was taken in Term and 5s. if taken in Vacation Then serves a notice of the Bail peice is transmitted, and also Copys of both the affid.ts on Plts Agent, The Notice may be thus. viz.t

In the Kings Bench

Between A: B. Plte and C: D. Deft

Mr. G— Take Notice that Special Bail is put in above for the Deft in this Cause and allowed & filed with the Clerk of the Bails &c. — and that the Bail are G: V. of the parish of N. in the County of S— Yeoman and J: L. of the same place Butcher dated the 26 day of May 1740. J: S. Agent for Deft.

If Plts Agent accepts the Bail Give him Notice that the Bail will justifye on [some day within 4 days exclusive after notice of exception vide fo: 57] Then take the Bails affid.t & take a Copy of Plts affid.t of debt to Shew the Court what the Debt is and get a Counsel to move to Justifye, Which having got the Judges Clerk to bring the Bail peice into Court for which he is paid 6:6. Filing affid.t of Justification with the Clerk of the Rules . . . .

Bail peice to remain w.th the Judge till excepted to & perfected & then it may be filed w.th the Clerk who is paid 0-0-4. but is not often filed till there is occasion to bring an action on it

fendant is forthwith to give Notice thereof in Writing to the Plaintiff or his Attorney, and of the Names of such Bail, with their Places of Abode, and Conditions; and if no Exception be taken to such Bail, and entered in the Judge's Book within twenty Days next after such Notice, then upon Oath thereof, (for which no Fee is to be taken,) such Bail shall within four Days next after be filed by the Attorney for the Defendant. *Mich.* 16 *Car.* 2. *Mich.* 8 *Annæ.*

Exception to be in 20 Days.

The Bail proved usually at the Chambers with the Judge, till there be occasion by bringing an Action on the Recognizance.

An Exception entered after the Expiration of the said twenty Days, shall be of no Validity. *Mich.* 8 *Annæ.*

After of no Validity.

Every Bail taken by Commissioners within forty Miles of *London* or *Westminster*, shall be transmitted to the Chief Justice, or one of the Judges of the Court, within eight Days after the Taking thereof; if above forty Miles, within fifteen Days, unless all the Judges be on the Circuits; and then as soon as any one of them is returned to his Chambers. And there must be an Affidavit of the due Taking the Bail, in the following or like Form.

In what Time Bail before a Commissioner to be transmitted.

Manner of Bail to be transmitted

In the *King's Bench.* *C. D.* against *A. B.*

Affidavit.

E. F. of in the County of Gent. maketh Oath, That the Recognizance of Bail hereunto annexed, was duly acknowledged by the said *G. H.* and *I. K.* in this Deponent's Presence, before *L. M.* Esq; the Commissioner who took the same.

This Affid.t to be Sworn before some Judge of the Court or Comm.r empowered to take Affid.ts in this Court, &c. as the Case may be.

Sworn, &c. *E. F.*

Proceſs in one County, Declaration in another, Bail not diſcharged if by Bill; aliter if by Original.

If the Defendant be arreſted by Proceſs directed to the Sheriff of one County, and Bail is put in thereon, and afterwards the Plaintiff lays his Action in another County, yet the Bail (if the Action be by Bill) are not diſcharged; otherwiſe if by Original.

Bail before Continuance-Day to be filed of Preceding Term, after Continuance-Day of the ſubſequent Term.

Every Bail taken before or upon the Continuance-Day, is a Bail, and to be filed of the preceding Term; and every Bail taken after the Continuance-Day, is a Bail, and to be filed of the ſubſequent Term, and not otherwiſe; but where new Bail is added to other Bail taken on or before the Continuance-Day, in ſuch Caſe ſuch new Bail ſhall be taken and filed as of that Term in which the Bail was firſt put in.

Bail to be juſtified in Court.

Bail cannot be juſtified before a Judge at his Chambers, except by Conſent, but muſt be juſtified in Court upon Notice given thereof, and Affidavit made of ſuch Notice.

In the Country by Affidavit.

Bail taken before a Commiſſioner in the Country may be juſtified without their perſonal Appearance in Court, by Affidavit of their Ability, and of their being Houſekeepers.

Bail accepted to be filed in 20 Days.

Every Bail put in before a Judge of the Court, which is accepted by the Plaintiff, ought to be filed within twenty Days after it is ſo accepted, by the Attorney who put it in. *Trin.* 13 *Car.* 2.

Husband to find Bail for his Wife.

If an Action wherein Special Bail is required, be brought againſt Huſband and Wife, and the Huſband only is arreſted, he ſhall put in Special Bail for his Wife as well as himſelf.

Bail

affid.t for Bail taken in ye Country to justify

In the Kings Bench Between A. B. Plt
C. D. Deft

H. P. of &c. & J. D. of &c. the Defts Bail in this Cause severally make oath that they these Depts are House keepers in ..... aforsd & that they are each of them worth ye Sum of ..apiece & upwards exclusive of all Debts or demands due from them to any person or persons whatsoever. J. D. H. P.

Sworne &c. ..

✱ N3. If ye same Bail be put in to ye action (viz.[2] above) as were Bail to ye Sheriff ye Pltf cant take an assignemt. of ye Bail Bond for want of their Justification tho' he except agt. yem, it having been determined yt such Bail shall stand. But if they are insufficient you may have a rule for ye Sheriff to return ye writ & if he returns a Capi Corpus you must have a rule for him to bring in ye Body. This is ye practice in B. R. relating to ye Bail in Bail Bond becoming Bail above. but tis otherwise in C. B.

Bail cannot be excepted againſt after the Plaintiff has declared, unleſs the Declaration was delivered *De bene eſſe*; for by declaring he has admitted the Bail to be ſufficient. *No Exception to Bail after Declaration delivered.*

Where an Exception is entered againſt Bail in Term-Time, and Notice in Writing is given of it to the Defendant's Attorney, the Defendant ſhall procure his ſaid Bail to juſtify, or ſhall add others who ſhall juſtify within four Days excluſive, next after ſuch Notice; but if ſuch Exception be entered in the Vacation, and the like Notice be given of it, the Bail firſt put in, or other additional Bail ſhall juſtify on the firſt Day of the following Term. *Eaſter* Term, 5 *Geo.* 2. *Bail in Term to be perfected in 4 Days after Exception.* *In Vacation, firſt Day of ſubſequent Term.*

Exception to Bail by Original to be entered in the Filacer's Book, as Exception to Bail by Bill is to be entered in the Judge's Book, and like Notice to be given of it to the Defendant's Attorney. *Exception to Bail by Original to be entred in Filacer's Book.*

* If the Plaintiff is diſſatisfied with the Bail taken by the Sheriff upon the Arreſt, and the ſame Perſons become Bail above, the Plaintiff is not bound to accept them, but may enter an Exception, and ſerve the Sheriff with a Rule to return the Writ within ſix Days next after Notice; and upon the Sheriff's returning the Writ, the Plaintiff may ſerve him with the like Rule to bring in the Body of the Defendant; and if the Sheriff neglect to return the Writ, or bring in the Body within the Time preſcribed by the Rule, the Court will grant an Attachment againſt him. *Mich.* 6 *Geo.* 2. *Rule for Sheriff to return the Writ.* *To bring in the Body.* *And in default an Attachment.*

It

Explanation of the Rule.

It is presumed it is not intended by the Rule for bringing in the Body of the Defendant, that the Sheriff shall in all Cases actually bring the Defendant into Court; for where the Plaintiff has taken a Bail-Bond, and the Defendant is at large, and the Return of the Writ is past before the Sheriff is served with the Rule, the Sheriff has no Power to retake the Defendant, and cannot comply with the Letter of the Rule; but the Design of it is, that good Bail be put in; and if that be done, the Sheriff will be in no Danger of an Attachment.

If Plaintiff takes an Assignment of the Bail-Bond, and the same Persons become Bail about, he cannot except against them.

If the Plaintiff takes an Assignment of the Bail-Bond, and the same Persons who are Bail to the Sheriff thereupon become Bail to the Action, the Plaintiff is not at Liberty to except against them.

Bail not liable to greater Sum than sworn to, and indorsed on Writ.

No Person being Bail in Court, or before a Judge, shall upon a Recovery against the Defendant be answerable for any greater Sum or Sums than are sworn to, or indorsed on the Writ, or Process, on which the Defendant was arrested, (although one Part of the Condition of the Recognizance is to pay the whole Condemnation Money, if the Defendant does not); and if a greater Sum be recovered, he shall not be discharged, but shall be liable for such Sum or Sums as shall be so sworn to, or indorsed, or any lesser Sum that shall be recovered against the Defendant in such Action, wherein he became Bail,

Bail, together with Coſts of Suit. *Eaſter 5 Geo.* 2.

No Bail in Covenant required, unleſs, &c.

In an Action of Covenant the Defendant is not bound to put in Special Bail, unleſs the Plaintiff has obtained a Rule of Court, or an Order from a Judge for that Purpoſe, or unleſs the Covenant is for Payment of Money.

No Bail for Debt on Judgment, unleſs, &c.

If an Action be brought upon a Judgment where the Debt or Damages recovered without the Coſts amount to ten Pounds or upwards, the Defendant muſt give Special Bail; but otherwiſe, where they amount to ten Pounds or upwards by the Addition of Coſts.

Bail cannot be Witneſs.

One that is Bail cannot be a Witneſs for the Defendant upon the Trial; but the Court upon Motion will diſcharge ſuch Bail on putting in another good Bail in his ſtead.

As to Bail on *Habeas Corpus*, *Certiorari*, Writs of Error, *&c.* See hereafter under thoſe ſeveral Heads.

Declarations.

When the Defendant hath filed his Bail, either Special or Common, as the Caſe required, the next Thing the Plaintiff has to do, is the preparing and delivering his Declaration, which is to contain the Subſtance and Matter of his Complaint.

Precedents

Precedents of Declarations.

Michaelmas *Term in the twelfth Year of King* George *the Second.*

On a Bond.
* As described in the Bond exactly.

If for a prisoner in a County Gaol say,
In the Custody of the Sheriff of the County of &c. vid. fo. 186.
But in C. B. the Action is taken thus, if the Def. is in Custody.

Middlesex, to wit. A. B. Complains of C. D. * otherwise called G. D. of in the County of Gent. in the Custody of the Marshal of the *Marshalsea* of our Lord the King, being before the King himself, of a Plea, that he render to him one hundred Pounds of good and lawful Money of *Great Britain*, which he owes him, and unjustly detains; for that, to wit, that whereas the said C. on the* Day of in the Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, and so forth, at the Parish of Saint *Clement Danes* in the County of *Middlesex*, by his certain Writing obligatory sealed with the Seal of the said C. and to the Court of our said Lord the King now here shewn, whose Date is the same Day and Year, acknowledged himself to be bound to the said A. in the said one hundred Pounds, to be paid to the said A. when he should be thereunto required; nevertheless the said C. although often required, hath not yet paid the said one Hundred Pounds to the said A. but hath hitherto refused, and still doth refuse to pay him the same, to the

* The Date of the Bond.

If more obligors than one, say Lord or to either of them.

5

N.B. If action be brot ag.st 2 or more for one Debt due on y.e same Specialty, observe whether y.e Specialty be joint or Several; If Joint, then y.e Decl.n must be that they jointly render to y.e Pltf so much money &c.
But if y.e Specialty be Joint and Several (as is most usual) Then so many Several Declarations must be delivered as there Defts in y.e writ, otherwise it is pleadable in abatement. 1. Inst. fol. 283

the Damage of the ſaid *A.* of twenty Pounds; And thereupon he brings Suit, *&c.*

Anthony Beckwith for the Plaintiff.
Robert Richardſon for the Defendant.
Pledges of Proſecuting { *John Doe.* *Richard Roe.*

London, to wit. A. *B.* Complains of *C. D.* being in the Cuſtody of the Marſhal of the *Marſhalſea* of our Lord the King, before the King himſelf, of a Plea, that he render to him five hundred Pounds, which he owes him, and unjuſtly detains; for that, to wit, That whereas the ſaid *C. D.* on the twenty-firſt Day of *April*, in the tenth Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, and ſo forth, at *London* aforeſaid, *to wit*, in the Pariſh of Saint *Mary Le Bow* in the Ward of *Cheap*, borrowed of the ſaid *A. B.* the aforeſaid five hundred Pounds to be paid to the ſaid *A. B.* when he ſhould be thereunto required; nevertheleſs the ſaid *C. D.* although often required, hath not paid the ſaid *A. B.* the ſaid five hundred Pounds, but hath hitherto refuſed, and ſtill doth refuſe to pay him the ſame, to the Damage of the ſaid *A. B.* of twenty Pounds; And thereupon he brings Suit, and ſo forth.

On a Mutuatus.

London,

On a Promiſſory Note.

London, to wit. A. *B.* Complains of *C. D.* being in the Cuſtody of the Marſhal of the *Marſhalſea* of our Lord the King, before the King himſelf; for that, whereas the ſaid *C. D.* on the Day of in the twelfth Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, and ſo forth, at *London* aforeſaid, *to wit*, in the Pariſh of Saint *Mary Le Bow* in the Ward of *Cheap*, made a certain Note in Writing, ſubſcribed with his own Hand, commonly called a Promiſſory Note, bearing Date the ſame Day and Year, by which Note the ſaid *C. D.* promiſed to pay to the ſaid *A. B.* or his Order, one Month after the Date of the ſaid Note, the Sum of ten Pounds for Value received, by him the ſaid *C. D.* by Reaſon whereof, and alſo by Force of the Statute in that Caſe made and provided, the ſaid *C. D.* became liable to pay to the ſaid *A. B.* the ſaid Sum of ten Pounds in the ſaid Note mentioned, according to the Tenor and Effect of the ſaid Note; and being ſo liable, the ſaid *C. D.* in Conſideration thereof, afterwards, *to wit*, the ſame Day and Year, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, undertook and then and there faithfully promiſed the ſaid *A. B.* that he the ſaid *C. D.* would well and truly pay to the ſaid *A. B.* the ſaid ten Pounds in the ſaid Note mentioned, according to the Tenor and Effect of the ſaid Note: *And whereas*

The Date of ſd Note

whereas One *E. F.* on the Day of in the twelfth Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, and ſo forth, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, made his certain Note in Writing, called a Promiſſory Note, ſubſcribed with his proper Hand, bearing Date the ſame Day and Year laſt aboveſaid, and by the ſame Note promiſed to pay to the ſaid *C. D.* or Order, two Months after Date of the ſame Note, thirty Pounds for Value recieved; And whereas, alſo the ſaid *C. D.* afterwards, *to wit*, the ſame Day and Year laſt aforeſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, (the ſaid thirty Pounds in the ſaid laſt mentioned Note contained, or any Part thereof, being no ways paid) by his certain Indorſement, with his proper Hand ſubſcribed on the ſame Note, Ordered the ſaid *E. F.* to pay to the ſaid *A. B.* the ſaid thirty Pounds in the ſaid laſt mentioned Note contained, of which ſaid Indorſement he the ſaid *A. B.* afterwards, *to wit*, on the Day of in the Year aforeſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, gave Notice to the ſaid *E. F.* and then and there requeſted him to pay to the ſaid *A. B.* the ſaid thirty Pounds, in the ſaid laſt mentioned Note contained, according to the Tenor of the ſame Note; which the ſaid *E. F.* then and there refuſed to do; whereof the ſaid *C. D.* afterwards, *to wit*, the ſame Day and Year laſt aforeſaid, at *London*.

On an Indorſed Note by the Indorſee againſt the Indorſor.

If Partners are Indorſors 2 Peer. Wms 829

don aforeſaid, in the Pariſh and Ward aforeſaid, had Notice, by Reaſon of which Premiſes, and by Force of the Statute in that Caſe lately made and provided, the ſaid *C. D.* became liable to pay to the ſaid *A. B.* the ſaid thirty Pounds, in the ſaid laſt mentioned Note contained; and being ſo liable, the ſaid *C. D.* in Conſideration thereof, afterwards, *to wit*, the ſame Day and Year laſt aforeſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, undertook and then and there faithfully promiſed to the ſaid *A. B.* that he the *C. D.* would, when he ſhould be thereunto afterwards required, well and faithfully pay the ſaid thirty Pounds to the ſaid *A. B. And alſo whereas* the ſaid *C. D.* afterwards, *to wit*, on the Day of in the twelfth Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, and ſo forth, at *London* aforeſaid, *to wit*, in the Pariſh of St. *Mary le Bow*, in the Ward of *Cheap*, was indebted to the ſaid *A. B.* in the Sum of forty Pounds of lawful Money of *Great Britain* for the like Sum of Money by the ſaid *A. B.* at the ſpecial Inſtance and Requeſt of the ſaid *C. D.* before that Time to the ſaid *C. D.* lent and advanced; and being ſo indebted, the ſaid *C. D.* in Conſideration thereof afterwards, *to wit*, on the ſame Day and Year laſt aforeſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, undertook and then and there faithfully promiſed the ſaid *A. B.* to pay him the ſaid forty Pounds, when

Ind. Aſſ. *for Money lent.*

For partners

*. If all ye Suit of Partners Say:^t " For that to wit that whereas the S:^d W:^m & Joseph now are and long before the Day of in the Year of our Lord 17[4]5. hereinafter mentioned were Copartners in Trade [and] at London (to wit) in ye parish of S:^t Mary le Bow in ye Ward of Cheap And also whereas the S:^d [Defe:^t] on ye Day of in ye Y:^r of our Lord 17[4]8 at London afo:^d in ye parish & Ward afo:^d was indebted to ye S:^d W:^m & Joseph in 50:^li [and so on with the Indeb. &c. as on other side

(or) for many Y:^rs last past were partners &c.

or thus. - - - - - For (to wit) That whereas on ye Day of in ye 11 Y:^r of ye Reign of our Sov:^r L:^d G:^e ye 2:^d now King of Great Britain & so forth & long before were & still are Partners (to wit) at London in ye Parish of S:^t Mary le Bow in ye Ward of Cheap And also whereas &c.

when he ſhould be thereunto required. *Neverthelefs* the ſaid *C. D.* no ways regarding his ſaid ſeveral Promiſes and Undertakings made in Form aforeſaid, but contriving, and fraudulently intending, craftily and ſubtilly to deceive and defraud the ſaid *A. B.* in this Behalf, hath not paid him the ſaid ſeveral Sums of Money, or any Part thereof, nor any ways contented him for the ſame (although often required, and ſo forth,) but hath altogether refuſed, and ſtill doth refuſe to pay him the ſame; to the Damage of the ſaid *A. B.* of fifty Pounds; And thereupon he brings Suit, and ſo forth,

The Damages as in ye Action. Then ye Bail will be discharged not ſo in B. R. the ſo. in C. B.

T. Leonard for Plaintiff.
Arthur Stone for Defendant.
Pledges of Proſecuting, *John Doe*, *Richard Roe.*

Declaration for Goods. Sold and Delivered

Trinity Term *in the Eleventh and Twelfth Years of King* George *the Second.*

London, *to wit.* *A. B.* Complains of *C. D.* being in the Cuſtody of the Marſhal of the Marſhalſea of our Lord the King, before the King himſelf, for that whereas the ſaid *C. D.* on the ♦ ♦ Day of in the Eleventh Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, and ſo forth, at *London* aforeſaid, *to wit*, in the Parish of St. *Mary le Bow*, in the Ward of *Cheap*,

the Indeb. Aff.

as if there was no more than this Count in a Decl. for Goods ſold, delivered &c. he wd be obliged to prove ye expreſs price agreed on: but by adding a Quant. Val. as on other Bills he need only prove ye Delivery & worth of ye Goods

F was

♦ ♦. May lay ye Day any time after ye Cauſe of Action and before ye Eſſoin day of ye Term ye Decl. is of

was indebted to the ſaid *A. B.* in fifty Pounds of lawful Money of *Great Britain*, for divers Goods, Wares and Merchandizes, by the ſaid *A. B.* before that Time ſold and delivered to the ſaid *C. D.* at his ſpecial Inſtance and Requeſt; and being ſo indebted, he the ſaid *C. D.* in Conſideration thereof, afterwards, *to wit*, the ſame Day and Year at *London* aforeſaid, in the Pariſh and Ward aforeſaid, undertook, and then and there faithfully promiſed the ſaid *A. B.* that he the ſaid *C. D.* would well and truly pay the ſaid fifty Pounds to the ſaid *A. B.* when he the ſaid *C. D.* ſhould be thereunto required.

Quantum Val. thereon.

And whereas the ſaid *C. D.* afterwards, *to wit*, the ſame Day and Year at *London* aforeſaid, in the Pariſh and Ward aforeſaid, in Conſideration that the ſaid *A. B.* had before that Time ſold and delivered to the ſaid *C. D.* at his like ſpecial Inſtance and Requeſt, divers other Goods, Wares and Merchandizes, undertook, and then and there faithfully promiſed the ſaid *A. B.* that he the ſaid *C. D.* would, when he ſhould be thereunto required, well and truly pay to the ſaid *A. B.* ſo much Money as the ſaid laſt mentioned Goods, Wares and Merchandizes, were, at the Time of the Sale and Delivery thereof, reaſonably worth; and the ſaid *A. B.* in fact ſays, that the ſaid laſt mentioned Goods, Wares and Merchandizes, were, at the Time of the Sale and Delivery thereof by the ſaid *A. B.* to the ſaid *C. D.* reaſonably worth other fifty Pounds of like lawful Money of *Great Britain*, *to wit*, at *London* aforeſaid,

ffor meat drink washing & Lodging

vid. also fo: 339

¶ ffor meat drink washing & Lodging Say ?" For meat Drink washing and
" Lodging by ye S^d A. for ye said C. at his Spetial Instance & request before that
" time found and provided and being so Indebted [and soon as before at mark ✠
✠ and ye Quantum Meruit thereof from mark ✠ found and provided other Sufficient
" Meat Drink washing & Lodging for a long time (to wit) for ye Space of 12. Months then
past at ye s^d? for him ye s^d C. D. at his like Spetial instance & request Undertook &
then and there faithfully promised ye s^d A. that he ye s^d C. wo^d well & truely pay to ye s^d
A. so much money as ye s^d A. reasonably deserved to have of ye s^d C. for ye s^d Meat
Drink washing & Lodging so found & provided for ye s^d C. by ye s^d A. as aforesaid.
And the said A. in fact Says that he reasonably deserved to have of ye s^d C.
for ye s^d Meat Drink washing & Lodging so found & provided by ye s^d A. for ye said
C. as aforesaid other 20. [&c.]

or thus for Meat, Drink, Lodging & Service.

¶ " of Lawfull money of Great Britain for Sufficient & necessary Meat Drink & Lodging by the
s^d A. for the s^d C. and his wife at ye Spetial Instance & request of ye s^d C. before that time
found & provided as for ye Service Labour & diligence of ye wife & Servants of him ye
s^d A. in & about ye necessary affairs & business of ye s^d C. and at his like Spetial instance &
request before that time found provided done and performed and being so indebted he
ye s^d C. in Cons^a [and so on as before fo: 6. mark ✠.

✠ And the Quantum Meruit from mark ✠ thus ?" At ye Spetial instance & request of ye s^d
C. had found & provided for ye s^d C. & his wife other Sufficient & necessary Meat Drink
& Lodging and also in Cons^a that ye s^d A. at ye like Spetial instance & request of ye s^d C.
had done & performed for ye s^d C. diverse other Services Labour & diligence in & about ye
necessary affairs & business of ye s^d C. Undertook & then & there [soon as aforesaid from mark ⊖
to mark ⊖

Quantum Meruit for ye Husbands board only ?" And whereas also ye s^d C. afterw^d (to wit) on ye same 9th day of M.
in ye Year above? at wch s^d? & ye s^d County in Cons^a of ye s^d A. had found & provided for ye s^d C. other Sufficient
& necessary meat drink & lodging Undertook & then & there [from mark ⊖ to mark ⊖

foreſaid, in the Pariſh and Ward aforeſaid, whereof the ſaid *C. D.* then and there had Notice. *Neverthelefs*, &c. *vid. fo. 64*

Nb. the Damages must be the same as in ye ac. then of writ or ye Bail will be discharged

Middleſex, *to wit.* } *A. B.* Complains of *C. D.* being in the Cuſtody of the Marſhal of the Marſhalſea of our Lord the King, before the King himſelf, for that whereas the ſaid *C. D.* on the Day of *&c.* at *Weſtminſter*, in the County of *Middleſex*, was indebted to the ſaid *A. B.* in twenty Pounds of lawful Money of *Great Britain*, as well for Work by the ſaid *A. B.* before that Time done and performed for the ſaid *C. D.* at his ſpecial Inſtance and Requeſt, as for divers Materials and Things neceſſary uſed in and about the ſaid Work, by the ſaid *A. B.* before that Time found and provided, at the like ſpecial Inſtance and Requeſt of the ſaid *C. D.* and being ſo indebted (as before.) *And whereas* the ſaid *C. D.* afterwards, *to wit*, the ſame Day and Year at *Weſtminſter* aforeſaid, in the County aforeſaid, in Conſideration that the ſaid *A. B.* had before that Time done and performed other Work for the ſaid *C. D.* at his like ſpecial Inſtance and Requeſt, and had found and provided divers other Materials and Things neceſſary uſed in and about the ſaid laſt mentioned Work, undertook, and then and there faithfully promiſed the ſaid *A. B.* that he the ſaid *C. D.* would, when he ſhould be thereunto required, well and truly pay to the ſaid *A. B.* ſo much Money, as he therefore reaſonably deſerved to have; and the ſaid

Indebitatus Aſſumpſit *for Work done, and Materials found.*

any Day after ye Cause of action, & ſome Day between ye Day of ye Writ & ye Day of ye Writ & Decl^a is of

on this Count ye Pltf must prove an expreſs price agreed on, therefore ye Quant. Meruit ad damnum is always added to — diſpence with ye proof of any price agreed on.

Quantum Meruit *thereon.*

A. B. in fact ſays, that he did therefore reaſonably deſerve to have of the ſaid *C. D.* other twenty Pounds of like lawful Money of *Great Britain*, *to wit*, at *Weſtminſter* aforeſaid, in the County aforeſaid, of which the ſaid *C. D.* had then and there Notice. *And alſo whereas* the ſaid *C. D.* afterwards, *to wit*, the ſame Day and Year, at *Weſtminſter* aforeſaid, in the County aforeſaid, had accounted with the ſaid *A. B.* touching and concerning diverſe Sums of Money before that Time due from the ſaid *C. D.* to the ſaid *A. B.* and then being in Arrear and unpaid; and the ſaid *C. D.* upon the ſaid Account, was then and there found in Arrear to the ſaid *A. B.* in other twenty Pounds of like lawful Money of *Great Britain*; and being ſo found in Arrear, he the ſaid *C. D.* in Conſideration thereof, afterwards, *to wit*, the ſame Day and Year, at *Weſtminſter* aforeſaid, in the County aforeſaid, undertook, and then and there faithfully promiſed the ſaid *A. B.* That he the ſaid *C. D.* would well and truly pay the ſaid laſt mentioned twenty Pounds to the ſaid *A. B.* when he the ſaid *C. D.* ſhould be thereunto required. *Nevertheleſs*, &c. *fo.* 65.

Imſimul Computaſſet.

Upon an Insimul Comp: must lay & very Day the Account & very Sum agreed on by both parties to be due, or ye will be nonsuited

(*As before to*) Was indebted to the ſaid *A. B.* in thirty Pounds of lawful Money of *Great Britain*, for ſo much Money before that Time had and received by the ſaid *C. D.* for the ſaid *A. B.* and to his Uſe, and being ſo indebted, &c.

Indebitatus Aſſumpſit *for Money had and received to the Plaintiff's Uſe.*

Was

x If a man disburse money ab.t my business w.th out my request, & afterwards in Cons.n of y.e s.d disbursing, I promise to pay him 20. It is not a good Cons.n for y.t it was done before y.e assumpsit. 1 Roll. Abr: 11. but otherwise if it be at my request

for goods

If an Action of Trover & Conversion be brot ag.t Man & wife it must be alledged y.t y.e Goods came were converted to y.e use of y.e Husband
For if its alledged they came to y.e Hands of y.e wife only, y.e action will not lie, for y.t y.e wife cant convert goods to her use only — 1 Rol. Ab. fo: 6

Trover & conversion lyes for a Carrier to whom goods are delivered to carry to a certain place, & a Stranger takes them out of his possession & converts them to his own use, y.e s.d action lyes for y.e Carrier ag.t y.e Stranger. Ib.m fo. 4

If a Carrier loses my goods no Action of Trover or Conversion lyes ag.t him, but an action on y.e Case Ibid.m fo. 6

Trover & Conversion lyes for money told in a Bagg, but not for loose Money

It lyes for an Obligation — Ibid: fo: 5. for a Ship w.th its appurt.s Lev.m 19

It lyes not for a Hawke because it is of a wild nature, unless it is [illegible] Teal.d it is tame Ibid.m

It lyes for a Spannell dog Ibid.m

Trover of a Ship &c. by 3 Jointt Merch.ts.

L. (Lovell) F. R. complains &c. being in &c. For that (Lovell) that whereas the s.d F. & one G: N: J. B. both now dead & whom y.e s.d F. survived in y.e Life times of y.e s.d Geo. B. (Lovell) on &c. at y.e Parish in y.e Parish of &c. aforesaid of &c. were possessed of y.e Goods & Chattels following (viz.t) of one Ship called y.e Straights Merch.t with all her Tackle Apparel & Furniture [meaning Guns were on board & mentioned] to y.e value of 2000li. of lawfull M.ny of E. & as of y.e proper Goods & Chattels of y.e s.d F. & y.e s.d G. & J. in y.e Life times of y.e s.d G. & J. and being so thereof possessed y.e s.d F. & G. & J. afterwards in y.e Life times of y.e s.d G. & J. (viz.t) on y.e same day & year above said at y.e aforesaid Parish & Island aforesaid casually lost y.e said Goods & Chattels out of their hands & possession w.th y.e said Goods & Chattels aforesaid (viz.t) on y.e same day & y.r above said in y.e Parish & Island aforesaid came by finding to y.e hands & poss.n of y.e s.d D. by reason whereof y.e s.d D. knowing y.e s.d &c. to be y.e Goods & Chat.s of y.e s.d F. & G. & J. & to y.e aforesaid &c. in y.e Life times of y.e s.d G. & J. (altho y.e s.d F. survived) of right to belong & appertain craftily & fraudulently intending &c. to deceive & defraud y.e s.d F. & G. & J. in y.e Life times of y.e s.d G. & J. (altho y.e s.d F. survived) the afores.d Ship with her Tackle Apparel & Furniture & the Goods & Chattels to y.e s.d F. & G. & J. in y.e Life times of y.e s.d G. & J. as to either of y.m or to y.e s.d F. after y.e death of y.e s.d G. & J. did & y.e s.d D. afterwards &c. in the year aforesaid converted &c. to y.e use of y.e s.d D. to y.e damage of y.e s.d F. worth &c. & therefore he brings his Suit &c. Jury [illegible] Dam. 2000li. & Costs

19

Was indebted to the ſaid *A. B.* in forty Pounds of lawful Money of *Great Britain*, for ſo much Money by the ſaid *A. B.* before that Time laid out and expended for the ſaid *C. D.* at his ſpecial Inſtance and Requeſt; and being ſo indebted, *&c.*

For Money laid out for the Defendant.

Michaelmas *Term in the twelfth Year of King* George *the Second.*

London, *to wit.* *A. B.* Complains of *C. D.* being in the Cuſtody of the Marſhal of the *Marſhalſea* of our Lord the King, before the King himſelf; for that that whereas the ſaid *A. B.* on the third Day of *Auguſt*, in the twelfth Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, and ſo forth, at *London* aforeſaid, *to wit*, in the Pariſh of St. *Mary Le Bow* in the Ward of *Cheap*, was poſſeſſed of the Goods and Chattels following, *to wit*, of one Gold Chain, one Silver Cup, and one Gold Watch, of the Value of fifty Pounds, as of his own proper Goods and Chattels; and being ſo thereof poſſeſſed, the ſaid *A. B.* afterwards, *to wit*, on the ſame Day and Year, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, caſually loſt the ſaid Goods and Chattels out of his Hands and Poſſeſſion, which ſaid Goods and Chattels, afterwards, *to wit*, on the ſame Day and Year, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, came by finding to the Hands and Poſſeſſion

Trover. for goods.

This Action lyes if ye goods are refused to be delivered. 1 R. Ab. fo. 5

Trover & Trespass cant be brot in one Declⁿ as Ron can Trover & Assumpsit.

If for Cattle say' was possed of divers Cattle that is to say of one Bull 2 Cows &c. of the price of 40^s. as of his own Cattle

of the ſaid *C. D.* Nevertheleſs the ſaid *C. D.* knowing the ſaid Goods and Chattels to be the proper Goods and Chattels of the ſaid *A. B.* and to him the ſaid *A. B.* of Right to belong and appertain, yet contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *A. B.* in this Particular, hath not, (though often required,) delivered the ſaid Goods and Chattels to the ſaid *A. B.* But afterwards, *to wit*, on the ſixteenth Day of *Auguſt* aforeſaid, in the Year aforeſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, converted and diſpoſed of the ſaid Goods and Chattels to his own proper Uſe, to the Damage of the ſaid *A. B.* of fifty Pounds; And thereupon he brings Suit, and ſo forth.

Pledges, *&c.* as before.

Tho' an Actual Converſion cannot be proved but a Demand & refuſal to deliver the Goods demanded is ſufficient Evidence of a Converſion. He muſt likewiſe prove a property in him & alſo the Poſſeſſion of the Goods demanded & refuſal as ſup.

Aſſault.

Middleſex, *to wit.* A. *B.* Complains of *C. D.* being in the Cuſtody of the Marſhal of the *Marſhalſea* of our Lord the King, for that the ſaid *C. D.* on the Day of in the Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, and ſo forth, at *Weſtminſter* in the ſaid County of *Middleſex*, with Force and Arms, *to wit*, with Staves and Swords, made an Aſſault upon the ſaid *A. B.* and beat, wounded, and treated him ill, whereby the ſaid *A. B.* was in great Danger of loſing his Life, and then and there did other Injuries to the ſaid *A. B.* againſt the Peace of the preſent King, to the Damage of the ſaid *A. B.* of five

Trespass & false Imprisonmt.

Northampton (to wit) Wm Lee Complains of Wm S. and F. A. being in ye Custody of ye Marshal of ye Marshalsea of our Lord the King before the King himself For that on ye 15th Day of March in the 5 year of the Reign of our Sovereign Lord George the Second now King of Great Britain and so forth They ye s.d Wm S. and F. A with force and arms made an Assault on ye s.d Wm Lee at Daventry in the said County and then and there beat wounded ill-treated, took and imprisoned him and without any reasonable or lawful Cause and against the Laws and Customes of this Kingdom of Great-Britain detained him there so imprisoned for a long time (that is to say) for the Space of Twenty four Hours from thence next following and duble the said Jno Lee paid a fine to ye s.d Wm S. and F. A. of 5 and 6 pence for his discharge and the s.d Wm S. and F. A. then & there committed other injuries agt him agt ye peace of our said Sovereign Lord the King and to ye Damage of ye s.d Wm Lee of 40£ and therefore he brings his Suit &c.

for ye Plte
for ye Deft

Pledges of prosecution

Jno Doe
Richd Roe

In Transitory Actions ~~in the Venue~~ the Day & time is not traverseable if
y^t not to be laid to be done in ye Vic^t. before ye bringing ye writ Woods Inst. 557
If in Trespass for a Battery or for Goods carried away the Deft plead not Guilty in ye Mitt
as ye Plto suppose, & it is found y^t ye Deft is Guilty in an other Town or at another Day than
ye Plto alledges in his Decl. Yet ye Plto shall recover. Lit. Sec. 485
If a Trespass is done on ye 4 of May & Plto alledgeth it to be done on ye 5th or
on ye first when no Trespass was done, Yet if the Trespass was done before
ye Action brought it is Sufficient. 1 Inst. 283. a.
But it is ye Practice to lay it some Day after the cause of Action. & before y^e
~~Delivery of the~~ writ & Form Decl. is of 1 Inst. 56. 205

five hundred Pounds; And therefore he brings Suit, and ſo forth.

T. Lennard for the Plaintiff.
R. Richardſon for the Defendant.
Pledges of Proſecuting { *John Doe*, *Richard Roe.*

If the Cauſe of Action ariſes on ſome Day within the Term of which the Declaration is delivered, the Declaration muſt be of ſome Day in the Term after the Cauſe of Action accrued, in this manner: *Michaelmas* Term, *to wit*, on *Monday* next after the Morrow of *All Souls*, in the twelfth Year of King *George* the ſecond; and not of *Michaelmas* Term generally.

Cauſe of Action ariſing in the ſame Term with Declaration, the Declaration to be of ſome Day ſubſequent.

If an Infant declares by Guardian, or *Prochien Amy*, the Defendant is not compellable to plead, until the Plaintiff produces a Rule of Court admitting him to declare by *Prochein Amy*, or Guardian.

Infant cannot declare by Prochein Amy, *or Guardian, without Rule of Court.*

Formerly the Declaration itſelf uſed to be delivered to the Defendant's Attorney, to keep till he had made a Copy of it, and then return it; but Inconveniencies ariſing, a Rule was made *Trinity* 12 *W.* 3. whereby the Plaintiff's Attorney is only bound to deliver a Copy of the Declaration to the Defendant's Attorney, who is to pay for the ſame after the Rate of 4 *d. per* Sheet, computing ſeventy-two Words to a Sheet, beſides the King's Duty.

Copy of Declaration to be delivered to Defendant's Attorney, who is to pay for the ſame.

For Non-Payment to be left in the Office, and Plaintiff to proceed.

And by the ſame Rule; if the Defendant's Attorney refuſes to pay for the Copy of a Declaration, the Plaintiff's Attorney may leave the Copy with the Clerk of the Declarations, who is to receive the ſame without Fee or Reward; and the Plaintiff's Attorney having given a Rule to plead, and demanded a Plea, may ſign Judgment for want of a Plea, and the Plea is not to be received before the Copy of the Declaration is paid for.

May be left in the Office, if Place of Abode of Defendant's Attorney is unknown.

Alſo, If in Caſe of the Abſence of the Defendant's Attorney, his Clerk ſhall refuſe to pay for it, or the Place of the Abode of the Defendant's Attorney be unknown to the Plaintiff's Attorney; the Copy of the Declaration may be left in the Office, but Notice thereof is to be given to the Defendant, or his Attorney, and ſuch Copy is not well delivered, but from the Time of ſuch Notice. *Trin.* 2 *Geo.* 2.

Defendant's Attorney to pay Plantiff's Attorney 4 d. *for his Warrant of Attorney, or Judgment.*

Upon the Delivery of every Copy of a Declaration, or taking the ſame out of the Office, the Defendant's Attorney ſhall pay to the Plaintiffs Attorney 4 *d.* for the Defendant's Warrant of Attorney, which Warrant of Attorney the Plaintiff's Attorney ſhall file with the proper Officer; and upon the Defendant's Attorney's refuſing to pay the ſaid 4 *d.* for the Warrant, Judgment may be ſigned. *Mich.* 5 *Annæ.*

Formerly Imparlances in all Caſes, except.

Formerly the Defendant in all Caſes had an Imparlance to the Term next after the Return of the Proceſs, except the Proceedings were by Original, or for or againſt Attornies,

a Writ be Not returnable ye 1st. or 2d. return of a Term, & Plt cannot get Judgment that Term, for if it be returnable any other Return ye Return after ye 1st or 2d. Deft is intitled to an Imparlance, as a Deft was in all cases till ye Rule of Trinit 5 & 6 G. 2. on ye other Side, But it is said to have been determined That if a Writ be returnable on ye 15th before ye 15th day of ye 3d Term Return, Deft is intitled to no imparlance, because ye time between ye 2d return & ye 15th day of ye 3d return, belongs to ye 2d Return vid. Reg. Misc. 5. Ann. in Mill fo. 52

by Rule of Mich: 2 G: 2. 1728. That where ye Cause of Action is specially setforth in ye Writ Deft. cannot imparle without Leave of ye Court but must plead in ye same time as by Original, or judgt. vid. ye Rule. 10th. is still in force.

Attornies, or other privileged Perſons, or againſt Priſoners in Cuſtody of the Marſhal; in which Caſes the Defendant was bound to plead, without any Imparlance the ſame Term the Declaration was delivered, (if delivered four Days before the End of the Term) and except the Proceedings were by *Habeas Corpus*, or the Proceſs was returnable the firſt Return of *Eaſter* or *Michaelmas* Term, and the Action laid in *London* or *Middleſex*; in which laſt Caſe, if the Declaration was delivered before the Eſſoin-Day of *Menſ. Paſ.* or *Craſtinum Animarum*, the Defendant was to plead two Days before the Eſſoin-Day of the ſubſequent Term. *Mich.* 5 *Annæ.*

In what Caſe Defendant to plead in four Days.

But now, by a Rule made in *Trinity* Term 5 & 6 *Geo.* 2. upon all Proceſs to be ſued out of this Court, returnable the firſt or ſecond Return of any Term, if the Plaintiff declares in *London* or *Middleſex*, and the Defendant lives within twenty Miles of *London*, the Declaration ſhall be delivered with Notice to plead within four Days after the Delivery, and the Defendant ſhall plead within the ſaid four Days without Imparlance; and in Caſe the Plaintiff declares in any other County, or the Defendant lives above twenty Miles from *London*, the Declaration ſhall be delivered with Notice to plead within eight Days after the Delivery, and the Defendant ſhall plead within the ſaid eight Days without any Imparlance; and in Default of Pleading in either of theſe Caſes, Judgment may be entered.

When in eight Days.

vid. other ſide In

If writ be returnable 1st or 2d return of any term Decl. must be delivered or notice given of its being filed 4 days (exclusive of ye Day whereon notice is given) before ye end of ye term wherein ye writ is so returnable & Deft is not obliged to plead that term but has a Imparlance to ye next term. vid. other side

and to plead an Imparlance Decl. must be delivered before ye 8th day of ye preceding term to that wherein writ is returnable

In both theſe Caſes the Declaration muſt be delivered at leaſt four Days before the End of the Term, excluſive of the Day of the Delivery, otherwiſe the Defendant will be intitled to an Imparlance.

If Bail filed by the Plaintiff, Declaration to be left in the Office, and Notice given.

Where a Copy of the Proceſs is ſerved, and an Appearance is entered, or Common Bail filed for the Defendant by the Plaintiff's Attorney, a Copy of the Declaration muſt be left in the Office of the Clerk of the Declarations, and Notice thereof is to be given to the Defendant, by delivering to, or leaving for him at his laſt or moſt uſual Place of Abode a Note in Writing, ſignifying the Nature of the Action, at whoſe Suit proſecuted, and the Time allowed by the Rules of the Court for pleading thereto; and that unleſs ſuch Defendant plead thereto within ſuch Time, Judgment will be entered againſt him by Default; and from the Time only of giving ſuch Notice, ſuch Declaration ſhall be well delivered; and if the Defendant does not plead within ſuch limited Time, Judgment may be ſigned without further or other calling for a Plea, and the Plaintiff may thereupon give Notice of executing his Writ of Inquiry, either by delivering a Notice in Writing to ſuch Defendant or Defendants, or by leaving the ſame at the laſt or moſt uſual Place of Abode of ſuch Defendant or Defendants. *Trin.* 1 *Geo.* 2.

Of Delivering Declarations by the By.

When a Defendant has filed Special or Common Bail, any Perſon may deliver or File againſt him a Declaration by the By, at any

land if process be not returnable on 1 or 2 return, but of any other return of any Term, Deft is intitled to an Imparlt up to next Term in wch Case a notice must be to plead wthin 1 four days of next .... Term and Declr in all Cases must be delivered 4 days before ye end of Term & 4 days before ye beginning of Term or Deft will be intitled to Imparlance of ye next Term after vid: f. 76. for other cause of Imparl.

It is said that one Plaintiff may declare ag.t the Defendt in as many Actions as you please
and Compleat Attorney 312 —

any Time (ſitting the Court) during the Term wherein the Proceſs againſt the Defendant was returnable; and I have heard it ſaid, that the Plaintiff, at whoſe Suit the Proceſs is, might declare againſt him in as many Actions as he thinks fit, before the End of the next Term after the Return of the Proceſs.

How in Caſe Plaintiff file Common Bail for the Defendant.

But for ſettling the Practice of the Court touching Declaring by the By in Caſes where the Plaintiff in any Action or Suit ſhall file Common Bail for the Defendant, purſuant to the late Act of Parliament for preventing frivolous and vexatious Arreſts, It is Ordered, That in all ſuch Caſes the Plaintiff in ſuch Action or Suit, wherein Common Bail hath been or ſhall be ſo filed as aforeſaid, may deliver a Declaration by the By againſt ſuch Defendant, in like manner as he might have done by the antient Practice of the Court; but that no other Perſon (except ſuch Plaintiff) is or ſhall be capable of delivering a Declaration by the By againſt any Defendant by reaſon of Common Bail being ſo filed by any Plaintiff as aforeſaid; and for the better diſtinguiſhing by whom Common Bail ſhall have been filed in any Action or Suit, It is further Ordered, That in all Caſes where Common Bail ſhall be filed by the Plaintiff for the Defendant by Virtue of the ſaid Act, theſe Words ſhall be wrote on the Bail-Piece, *viz.* [filed according to the Statute] or Words to the like Effect. *Mich.* 10 *Geo.* 2.

Upon

Of Delivering Declarations de bene esse. *Where no Affidavit of Debt, Declaration to be delivered, with Notice to plead in* 8 *Days.*

Upon all Proceſs to be iſſued out of this Court, returnable the firſt or ſecond Return of any Term, where no Affidavit ſhall be made and filed of the Cauſe of Action, purſuant to the late Act of Parliament for preventing frivolous and vexatious Arreſts, the Plaintiff may deliver the Declaration *de bene eſſe*, at the Return of ſuch Proceſs, with Notice to plead within eight Days after the Delivery thereof; and if the Defendant doth not file Common Bail, and plead within the ſaid eight Days, the Plaintiff having filed Common Bail for ſuch Defendant, according to the ſaid Act may ſign Judgment for want of a Plea, a Rule to plead having been duly entered; and upon all Proceſs to be iſſued, and made returnable as aforeſaid, where an Affidavit ſhall be made and filed of the Cauſe of Action, purſuant to the ſaid Act, the Declaration may be delivered at the Return of ſuch Proceſs, with Notice to plead in four Days after ſuch Delivery, if the Action is laid in *London* or *Middleſex*, and the Defendant lives within twenty Miles of *London*, and in eight Days if the Action is laid in any other County, or the Defendant lives above twenty Miles from *London*; and if the Defendant puts in Bail, and does not plead within ſuch Time, as is reſpectively before mentioned, Judgment may be ſigned, a Rule to plead having been duly entered. *Mich.* 10 *Geo.* 2.

Where an Affidavit in 4 *Days, if in* London *or* Middleſ. &c.

Otherwiſe in 8 *Days.*

In

on ye back of ye Decl.

When you deliver a Decl. de bene esse, always charge entring
appearance for Deft by Attd. 0-6-8 for if Defts attorny
should enter it wrong & plead, It is not clear that Pltfs Attorn
can enter it & charge it on ye Issue. If Deft appears right
it is only striking it out when Pltfs Attorny is p^d for ye Decl.

By this rule a Decl. cant be delivered de Bene Esse till ye writ is returnable, or at least
not before ye day whereon ye writ is returnable

N.B. before you deliver or file Decl. de Bene Esse in B.R, Always search
if Deft has filed Comon Bail for if Comon Bail be filed ye Decl. cant be
de Bene Esse, and if Comon Bail be filed & Pltfs Sol^r deliver or file
his Decl. de Bene esse, a Judge on a Summons will grant
Deft an Imparlance to ye Next Term

* If Pltf does not declare either of ye Term writ is returnable or before ye end of ye ensuing Term (Dft having appeared) Dft may sign non pross at any time in ye vacation of such ensuing (or 2d) term, & not afterwards.

vid Teaching Attorny fo: 88, 89 for a Form of Nonpros ad Barram, on a Pattitat for not declaring for want of a Rept. & post 126

In an Action requiring Bail, the delivering a Declaration before Bail is put in, is a Waiver of the Bail; and if before the Bail be juſtified, it is an Acceptance of them; but if delivered *de bene eſſe*, then it is only conditionally that good Bail be put in, or the Bail already put in do juſtify.

Delivering a Declaration, unleſs de bene eſſe, *before Bail is put in, is a Waiver of the Bail.*

* If Proceſs Iſſue out of this Court returnable at a Day certain, and the Defendant doth by his Attorney appear and file Bail of the Term wherein the Proceſs is returnable, and the Plaintiff doth not declare before the End of the Term next following, a Non-Proſs may be ſigned, without entering any Rule to declare or calling for a Declaration, and the Defendant ſhall have Coſts taxed as uſual. 13 *Car.* 2. *c.* 2. §. 3.

Plaintiff to declare before the End of the ſecond Term, or non-proſs'd.

Non proſs

In the Common Pleas a rule must be given & demanded in writing

And if the Declaration ſhould be tendered at any Time after the End of the ſecond Term, and before the Non-Proſs is ſigned, the Plaintiff is not bound to accept the Declaration, but may Sign his Non-Proſs at any Time after the End of the ſecond Term.

Non-Proſs may be ſigned, although Declaration tendered.

In Caſe the Proceeding be by Original, the Practice in this Court is the ſame with the *Common Pleas*; the Defendant muſt before the End of the ſecond Term, or within four Days after, enter a Rule for the Plaintiff to declare, and demand a Declaration in Writing; and if the Plaintiff don't Declare before the Rule is out, the Defendant may at any Time, before the Eſſoin-Day of the next Term, ſign a Non-Proſs, but not afterwards.

Signing Non-Proſs when by Original.

The

When Plaintiff may amend in Matter of Form, without paying Costs, or giving Imparlance.

The Plaintiff may amend his Declaration after a General Issue pleaded, and before Entry, in Matter of Form, without paying Costs, or giving an Imparlance; but if in Substance, he must pay Costs, or give an Imparlance, at his Election.

If in Substance after Special Plea, must pay Costs.

If the Amendment be in Substance after a Special Plea pleaded, the Plaintiff must pay Costs, though he had rather give an Imparlance.

On Amendment Defendant to plead de novo, *and in what Time.*

In all Cases of Amendment after Plea pleaded, the Defendant has Liberty to plead again, and has two Days for that Purpose, after the Amendment made and Payment of Costs.

If Rule before in same Term, no new Rule.

If a Rule to plead be entered the same Term, the Amendment is made, though before such Amendment it is sufficient, otherwise a new Rule to plead must be entered.

Bill on the File may be Amended before Plea.

The Plaintiff may Amend his Bill upon the File at any Time before Plea pleaded, during the Term of which it is filed, but not afterwards, without Leave of the Court.

New Count not to be added after the Plea, or second Term.

The Plaintiff after Plea pleaded, or after the End of the second Term shall not add a new Count to his Declaration (as an *Indebitatus Assumpsit*, or the like) under Pretence of Amending his Declaration.

Plaintiff may Discontinue.

If the Plaintiff sees Occasion, he may Discontinue either before or after Declaration delivered, by Motion at the Side-Bar, on Payment of Costs.

It is said you may get a rule to discontinue a suit before Of appeard. without a Motion at ye Side Barr

Rule to plead when & how to be given.

After Declaration is delivered (either by filing & Notice thereof, or by Delivery to ye Defts Attorny). Make out ye Paper for Rule to plead, setting down on a bit of paper the Title of as many Causes as you are to give Rules to Plead in one under another and the day of ye Month, Thus "

T. B. agt St. &c.
J. R. agt L. &c. } Rules to plead
&c. &c.

24 Janry 1740

S. for the Plts

This Note or paper of Rules was formerly carried to ye Secondary who thereupon gave ye Rules, which rules were afterwards carried to ye Office of Rules to be entered but now this Note or paper for Rules to plead is carried to & left with ye Clerk of ye Rules who thereupon gives Rules to plead and takes for each Rule or Cause — 0 — 1 — 4. — The Rules are for 4 days, but Sunday not to be accounted one.

N3. If Rules to Plead are given in one Term and Deft is intitled to an Imparlance so yt his time for pleading is not out till ye next Term or Judgmt for want of a plea is omitted to be Signed till some Term after that in which Rules to plead were given; Then anr Rule must be given of such Subsequent Term before a plea can regularly be demanded or Judgmt Signed.

of Demanding Pleas.

Pleas to be demanded in writing. but where Decl. is filed & notice thereof given (unless de bene esse) there is no need of further calling for Plea. — After Rules to plead given & before they are out Demand a plea in writing thus. Mr. C. / Plts Demands a plea of St. agt S. otherwise Judgmt &c. T. for D. Tab

24 Janry 1740.

A Discontinuance. / entered on ye Roll

Afterwards (to wit) on next after in ye 16 year of the Reign of our Sovereign Lord George the Second now King of Great Britain &c. before ye sd Lord ye King at Westmr. came as well the sd S. R. [Plff] by ye sd . . . . his Attorny as ye sd P. H. by his Attorny and ye sd P. H. did not then & there prosecute his said Bill as to ye said S. but voluntarily permitted his said Suit to be discontinued. Therefore afterwards (to wit) on the same day by the Discretion of the Justices of the said Lord the King here before the King himself 53s. and 4d. were adjudged to ye sd S. [Deft] for his Costs and Charges by him about his defence in this behalf sustained — according to the form of the Statute in that Case lately made and provided and the aforesd [Plff] in Mercy And the said [Deft] may have Execution for the same

An Affidavit to change ye venue.

In the Kings Bench 13th Nov. A: D. 1710 and C. D. Gent

C. D. of &c. the Deft in this Cause maketh Oath that ye Cause of Action mentioned in ye Decl^n delivered in this Cause (if any such there be) did arise in ye County of N. and not in ye City of L. nor elsewhere out of the said County of N.

Of Changing the Venue.

IN any Tranſitory Action, except in Debt, *Scandalum Magnatum*, Eſcape, Deceit, on a falſe Return, againſt a Carrier or Lighterman, on the Statute of Uſury, Covenant; and, as I have heard, on a Note of Hand; on Motion made before the Rules for Pleading are out, and Affidavit that the Cauſe of Action aroſe in the County of *A.* and not in the County of *B.* (where the Action is laid) or elſewhere out of the County of *A.* the Court will change the *Venue* into the County of *A.*

Venue may be changed on Affidavit in Tranſitory Actions, except, &c.

If a Barriſter, Attorney, or other Officer of the Court be Plaintiff, and the Action be laid in *Middleſex*, the *Venue* ſhall not be changed; and if any ſuch Perſon be a Defendant, and ſued in any other County than *Middleſex*, the Court will on Motion alter the *Venue* to *Middleſex.* (before rules for pleading are out)

Privilege of Barriſters, Attornies, &c. as to laying and altering the Venue.

But where ſuch Perſons ſue or are ſued in *auter Droit*, as Executors or Adminiſtrators, *&c.* or jointly with other Perſons, they loſe their Privilege.

Except.

Where Evidence neceſſary to ſupport the Action ariſes in two Counties, the Plaintiff may chuſe which he will. And if the Plaintiff will be bound to give ſome material Evidence in the County where the Action is laid, the Court will never change the *Venue.*

Where Evidence ariſes in two Counties, Plaintiff may lay the Venue *in which County he will.*

After

Where the Plaintiff ſhall not alter his own Venue.

After the Eſſoin-Day of the ſubſequent Term after Appearance, the Plaintiff ſhall not alter his own *Venue*, though he would pay Coſts, or give an Imparlance.

Pleas.

Pleas.

PLEAS are either General or Special; a General Plea is a conciſe direct Anſwer to the Plaintiff's Declaration, muſt be written on Paper, with a double Penny Stamp, and delivered to the Plaintiff's Attorney; but if his Place of Abode be unknown to you, it may be entered in the General Iſſue Book, kept by the Clerk of the Doggets, for which you pay 4 *d.* and you pay the Plaintiff's Attorney 1 *s.* for the Entry.

General Iſſue.

Non eſt Factum *to Bond.*

And the ſaid *C. D.* by *R. R.* his Attorney, comes and defends the Force and Injury, when, and ſo forth, and ſays, that he ought not to be charged with the ſaid Debt, by Means of the ſaid Writing Obligatory, becauſe, he ſays, that the ſaid Writing Obligatory is not his Deed; and of this he puts himſelf upon the Country.

Nil Debet.

And the ſaid *C. D.* by (*as before to*) when, and ſo forth; and ſays, that he does

Plea

Several Defts in Debt on a joint contract may Plead Several Pleas in Barr, but must Join in Dilatories. Huttons Rep.tt 26

on Issues Charge 1. entring Gen.l Plea & 4d only for warrants

If a Gen.l Plea be not delivered to Plts Attorny on Stamps, but entred only in Mr Lantrow's Book The Plts Attorny on finding a Gen.ll Plea thereon entred, ~~entitles~~ writes it on form after his Decl.n & delivers issue

* If by an Exr. or Admr. Say: "That ye Dt. Dd. ~~did~~ in his Life time did not undertake in manner & form &c.

not owe to the ſaid *A. B.* the aforeſaid 500 *l.* or any Part thereof, in Manner and Form as the ſaid *A. B.* above complains againſt him; And of this he puts himſelf upon the Country.

* And ſays, That he did not undertake in Manner and Form as the ſaid *A. B.* above complains againſt him; And of this he puts himſelf upon the Country. Non aſſumpſit.

And ſays, that he is in nothing Guilty of the Premiſſes above laid to his Charge, as the ſaid *A. B.* above complains againſt him; And of this he puts himſelf upon the Country. Non Cul. *in Caſe.*

And ſays, he is not Guilty; And of this he puts himſelf upon the Country. Non Cul. *in Treſpaſs.*

When, and ſo forth, and as to the coming with Force and Arms, or whatſoever, that is againſt the Peace of our Lord the now King, the ſaid *Thomas* ſays, That he is not guilty thereof; And of this he puts himſelf upon the Country. And the ſaid *Richard* likewiſe, and ſo forth. And as to the Reſidue of the Treſpaſs above ſuppoſed to be done, the ſaid *Thomas* ſays, That the ſaid *Richard* ought not to have or maintain his ſaid Action thereof againſt him, becauſe he ſays, That the ſaid *Richard*, at the ſaid Time in which the ſaid Treſpaſs is above ſuppoſed to be done, at *Lewes* in the County aforeſaid, with Force and Arms, and ſo forth, made an Aſſault upon the ſaid *Thomas*, and then and there would have beaten, wounded, and ill treated the ſaid *Thomas*, if he the ſaid *Thomas* had not then and there preſently defend-

Son aſſault. demeſne.

non culp. as to part

Son aſſault as to reſidue.

NB. This must be a Rule for this Plea.

ed himſelf againſt the ſaid *Richard*; whereupon the ſaid *Thomas* then and there defended himſelf againſt the ſaid *Richard*; and ſo the ſaid *Thomas* ſays, that the Miſchief or Damage, if any then and there happened to the ſaid *Richard*, it was on the proper Aſſault of the ſaid *Richard*, and in the Defence of the ſaid *Thomas*. And this the ſaid *Thomas* is ready to verify; wherefore he prays Judgment, whether the ſaid *Richard* ought to have or maintain his ſaid Action againſt him.

Replication de Injuria ſua propria.

And the ſaid *Richard* ſays, That he ought not, by any thing by the ſaid *Thomas* above by Pleading alledged, to be barred from having his ſaid Action for the Reſidue of the ſaid Treſpaſs againſt the ſaid *Thomas*; becauſe, he ſays, that the ſaid *Thomas*, on the Day and Year aforeſaid in the ſaid Declaration mentioned, at *Lewes* aforeſaid in the County aforeſaid, of his own proper Injury, without any ſuch Cauſe as by the ſaid *Thomas* is above by Pleading alledged, made an Aſſault upon the ſaid *Richard*, and beat, wounded and ill treated him the ſaid *Richard*, in Manner and Form as the ſaid *Richard* above thereof complains againſt the ſaid *Thomas*; and this, he prays, may be inquired of by the Country; and the ſaid *Thomas* likewiſe, and ſo forth. Therefore, as well to try that Iſſue, as the ſaid other Iſſue above-joined, between the ſaid Parties, let a Jury come thereupon before our Lord the King, at *Weſtminſter*, on next after and who are in no wiſe of Kin either

plene administravit preter 17li.

as on the other side to mark †. Because he saith that he hath fully administred all that was of Good & Chattles of the said Anthony at y time of his death in his hands to be administred except Goods & Chattels to y value of 17li. and that he y s.d R. hath not nor at y day of exhibiting y bill of y s.d R had in his hands — unadministred any Goods & Chattles which were of s.d Anthonys at the time of his death except Goods & Chattels to y value of y s.d 17li. and this he is ready to verify, wherefore he prays Judgm.t whether y s.d R. ought to have or maintain his said Action ag.t him except for y s.d 17li. &c.

Repd. And y s.d R. as to y s.d 17li. which y s.d Q. acknowledges to be in his hands — unadministred prays Judgm.t and y.t of y s.d 17li. together with his damages occasioned by y detaining of y s.d 17li. may be awarded to him &c. Therefore it is considered & adjudged that y said R. do Recover ag.t y said Q. the s.d 17li. of y Goods & Chattles that were of y s.d Anthony: And y s.d Q. in mercy &c. And y s.d R. as to y residue of his said Damages saith that (notwithstanding any thing above alledged by y s.d Q. in his plea) he ought not to be precluded from his said action ag.t him. because as to the said plea by y s.d Q. above pleaded he y s.d R. saith That at y day of exhibiting y bill of y s.d R. (that is to say) on y 7th day of May in the 5th year of the reign of his present Majesty The said Q. had unadministred in his hands divers goods & Chattels wch were of s.d Anthonys at y time of his death to the value of y residue of his said Damages over & above y said Goods and Chattels to the value of the said 17li. whereby he was able to have made Satisfaction to y s.d R. (that is to say) at Southwark in y County aforesaid and this he prays may be inquired of by y Country And the said Q. likewise &c. to the contrary. ∴ And because it is Convenient that in this Case there shod be but one Taxation of Costs if Judgm.t shd happen to be given for y s.d R. for y Residue of his said debt & Damages Therefore let the Taxation of Damages stay for not paying y s.d 17li. (which y s.d Q. acknowledges to have in his hands unadministred) till y s.d issue above Joined to be tryed between y s.d parties be determined And as to trying that issue let there come a Jury thereupon before our Sovereign Lord y King at Westminster on next after &c.

Judgm.t for 17li. & Same Nisi prius

Mercy

Traverse as to y residue.

Issue

∴ Venia, Inquisitio.

either to the ſaid *Richard*, or to the ſaid *Thomas*, to take Cognizance upon their Oaths, of the whole Truth of the Premiſes; becauſe as well the ſaid *Thomas*, as the ſaid *Richard*, have put themſelves upon the Jury. The ſame Day is given to the Parties aforeſaid, at the ſame Place.

Plene adminiſtravit *by an Executrix. to a Decl.n in Caſe.*

And the ſaid *Mary*, by *Walter Jobber* her Attorney, comes and defends the Force and Injury, when, and ſo forth; and ſays, that the ſaid *Sarah* ought not to have or maintain her ſaid Action thereof againſt her the ſaid *Mary*, becauſe ſhe ſays, that the ſaid *Mary* hath fully adminiſtred all and ſingular the Goods and Chattels, which were the Goods and Chattels of the ſaid *William Bury* at the Time of his Death, in her Hands to be adminiſtred; and that ſhe the ſaid *Mary* has not nor at the Time of exhibiting the Bill aforeſaid, or at any Time ſince, had any Goods or Chattels, which were the Goods and Chattels of the ſaid *William Bury* at the Time of his Death, in her Hands to be adminiſtred, whereby the ſaid *Sarah* might have been ſatisfied of the Damages aforeſaid, or any Part thereof. And this ſhe the ſaid *Mary* is ready to verify; wherefore ſhe prays Judgment, whether the ſaid *Sarah* ought to have or maintain her Action aforeſaid thereof againſt her, and ſo forth.

Replication.

And the ſaid *Sarah* ſays, that ſhe, by reaſon of any thing by the aforeſaid *Mary* above by Pleading alledged, ought not to be barred from having her ſaid Action a-

gainſt her the ſaid *Mary*, becauſe ſhe ſays, that the ſaid *Mary* has, and at the Time of exhibiting the Bill aforeſaid, that is to ſay, on the Day of in the Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, and ſo forth, at *Weſtminſter* in the County aforeſaid, had divers Goods and Chattels, which were the Goods and Chattels of the ſaid *William Bury* at the Time of his Death, in her Hands to be adminiſtred, ſufficient to ſatisfy the ſaid Damages, whereof ſhe the ſaid *Sarah* might have been ſatisfied her Damages aforeſaid. And ſhe prays that this may be enquired of by the Country; and the ſaid *Mary* likewiſe, and ſo forth. Therefore let a Jury come thereupon before our Lord, the King, at *Weſtminſter*, on next after and who are in no wiſe of Kin either to the ſaid *Sarah*, or to the ſaid *Mary*, to take Cognizance upon their Oaths, of the whole truth of the Premiſes; becauſe as well the ſaid *Mary*, as the ſaid *Sarah*, have put themſelves upon that Jury. The ſame Day is given to the Parties aforeſaid, at the ſame Place.

If in Debt ſay [Debt & Damages.]

Iſſue.

If it is by origin: vid. fol. 159 for 3d form of Iſſue

Term's Notice to plead after four Terms are elapſed.

If four Terms be elapſed after the Declaration is delivered, the Defendant ſhall have a whole Term's Notice to plead, before Judgment can be entered againſt him, unleſs the Cauſe has been ſtayed by Injunction or Privilege.

Two Days after Amendment, to alter or vary the Plea,

If the Plaintiff amends his Declaration, the Defendant ſhall have two Days, excluſive

The forme of an admission of a Guardian in B. R. for an Infant to sue & defend. which is to be written on a prior parchment cut in the forme of a Bail peice

Rifley Dobbin. vid Pasch 2 C. B. fo. 149

Cambridgshire (to wit) M: D. who is within the age of Twenty one years is now admitted by the Court of our Soveraign Lord the King before the King himself by J. S. gentleman his Guardian to prosecute and defend all and all manner of Actions and Suits depending in the same Court. at the Suit of L. B.

Loo

The Guardian is to make an affid.t of his Consent to be Guardian.
This admission is before a Judge

After the admission is Signed by the Judge it must be carried to the Clerk of the Rules to be filed & entred (for it is no record till that be done) and the Clerk of the Rules makes a Rule thereon

Expences out of Purse

Duty & Oath for the Guardians affid.t	0-2-0
Paid for the admittance	0-13-0
To the Clerk of the Rules for filing & entring admission	
To him for the Rule	

ſive of the Day of Amendment, to alter his firſt Plea, or plead any other.

A Defendant having pleaded to Iſſue, and the Plaintiff neglecting to enter the Iſſue the ſame Term the Iſſue is joined, the Defendant, within the firſt five Days of next Term, may alter his Plea and Demurrer, or plead another Plea, if he pleaſes. *Sed. Q. if can waive the General Iſſue.* *When Defendant may vary his Plea.*

If an Infant be ſued, he can't regularly plead by Guardian, until admitted ſo to do by ſome Judge of the Court, and ſuch Admittance made a Rule of Court. But if he ſhould, it is only a Miſdemeanor in the Attorney, but not Error. *vid. fo. 71.* *Infant Defendant muſt be admitted to plead by Guardian.*

When the Diſpute betwixt the Plaintiff and Defendant is only how much is due to the Plaintiff, and not whether any thing at all is due to him, the Defendant, before he pleads, muſt move the Court to pay into Court what is really due to the Plaintiff; and upon ſuch Motion the Court will order, That the Defendant ſhall have Leave to bring into Court five Pounds, (or whatever Sum the Defendant moves to pay in); and thereupon, unleſs the Plaintiff ſhall accept thereof, with Coſts to be taxed by the Maſter, in full Diſcharge of the Suit, the ſaid five Pounds ſhall be ſtruck out of the Declaration, and paid out of Court to the Plaintiff, or his Attorney; and upon the Trial of the Iſſue, the Plaintiff ſhall not be permitted to give Evidence for the ſaid five Pounds. After having drawn up the Rule, you pay the Money to the Signer of the Writs, who acts *Paying Money into Court.* *The Rule.* *To whom the Money is to be paid.*

acts as Clerk or Agent to the Secondary herein, the Secondary being by Rule of Court made *Paſ. quinto Jacobi* 1. the Officer appointed for that Purpoſe.

Plead the General Iſſue.

After the Defendant has paid in the Money, he muſt ſerve the Plaintiff's Attorney with the Rule, and give him the General Iſſue. And if the Plaintiff accepts the Money in full Diſcharge of the Suit, he ſhall have his Coſts to the Time the Money is paid in. But if he will not accept it in full Diſcharge, he may take the Money out of Court in Part of his Demand, and go on with the Action. But if on the Trial he does not obtain a Verdict for a greater Sum than was paid into Court, he will be Nonſuited, and pay Coſts to the Defendant.*

The Effect and Conſequence of paying Money into Court.

Money not to be paid into the Court without Leave.

No Sum, how ſmall ſoever, to be paid into Court without Leave to be obtained on Motion.

If Suit by Original, need not plead till Oyer of Original.

The Defendant is not bound to plead to a Declaration by Original, till Oyer and a Copy of the Original is given him, if he demands it. But I have been refuſed it in the *Common Pleas*, though I have heard a Defendant has received ſome Relief upon a Bill of Exceptions in this Caſe. *v.* 159

And Oyer of Deeds, &c. pleaded by Profert in Curia.

If the Plaintiff in his Declaration ſhall make a *Profert in Curia* of any Deed, or other Writing, Letters of Adminiſtration, or the like, the Defendant may pray Oyer thereof, and muſt have a Copy delivered him, paying for the ſame after the Rate of Four-pence per Sheet, beſides Stamp-Duty,

* Unless Affe be in Eq^l. or Adm^t. then no Costs will be allowed Deft tho' ye Verdict is not for more than 5^li into Court, Eq^l & Adm^t Affes are not liable to Costs Eq^l & Adm^t &c.

Pleas in Abatement conclude to ye Bill or writ, and prays that ye same may be Quashed

Pleas in Barr conclude to ye Action and pray Judgm^t. whether Pla^{ff} ought to Have or maintain his Action upon a^d Deft.

Note Pleas in abatement being found a^g^t him that pleads them are peremptory against him. 1. Sid. 252. 1. Ld. Ray. 163. vid. Hawkins Abr. of C. L. 405.

163. In Abatement Deft must plead in 4 days after Decl^n. delivered unless in Vacation (then Deft has 4 days in ye next Term to plead as of ye preceding Term

and ſhall have ſuch Time after to plead, as he had when he demanded Oyer. *Time to plead after.*

If a Defendant is bound by a Rule or Order of Court, to plead by a Time therein limited, it is incumbent on him to plead by ſuch Time, although the Plaintiff does not enter any Rule to plead, or call for a Plea. *When Defendants muſt plead without a Demand of a Plea.*

Upon giving any General Iſſue, or General Demurrer to any Declaration (before any ſpecial Demurrer or ſpecial Plea pleaded) the Plaintiff's Attorney ſhall deliver to the Defendant's Attorney a Copy of ſuch Iſſue, or of the Demurrer-Book; and the Defendant's Attorney ſhall pay for the ſame, beſides the Duty, after the Rate of Four-pence *per* Sheet, computing 72 Words to every Sheet. And if the Defendant's Attorney ſhall not pay for ſuch Copy of any General Iſſue or Demurrer, and for the Stamps, upon the Tender of the ſame, the Plaintiff's Attorney may ſign his Judgment as if no Plea or Demurrer had been given or pleaded. *Trin.* 12 *W.* 3. *Copy of General Iſſue or Demurrer to be delivered, and paid for at Four-pence* per *Sheet.* *Otherwiſe Judgment.*

Special Pleas, which ſet forth the Matter pleaded at large, muſt be ſigned by Counſel, and are of two Sorts, in Abatement and Bar. *Special Pleas.*

A Plea in Abatement, often merely dilatory, is not a Plea to the Action, but to the Bill or Writ (if by Original). *v. fo.* 92. *A Plea in Abatement.*

A Plea in Bar is to the Action, and deſtroys it for ever. *v. fo.* 92. *in Bar.*

Pleas in Abatement are for many Cauſes; as for that the Plaintiff is an alien Enemy, *Cauſes of Abatement.*

is outlawed or excommunicated, Privilege in the Defendant as being an Attorney of the *Common Pleas*, or the like, Variance between the Original and Declaration, for that the Teſtator made two Executors, and but one is named in the Bill; for *miſnomer*, *cum multis aliis*.

That the Defendant is Adminiſtrator and not Executor.

And the ſaid *Robert Parry*, by *Robert Richardſon* his Attorney, comes and defends the Force and Injury, &c. and prays Judgment of the Bill aforeſaid, becauſe he ſays, that the ſaid *William Hunt*, upon the tenth Day of *November* in the Year of our Lord 1729, at *Weſtminſter* aforeſaid, died inteſtate; after whoſe Death, Adminiſtration of all and ſingular the Goods and Chattels, Rights and Credits, which were the ſaid *William Hunt's* at the Time of his Death, by *William* by Divine Providence Archbiſhop of *Canterbury*, Primate of all *England* and Metropolitan, on the 22d Day of *January* in the Year of our Lord 1729, at *Weſtminſter* aforeſaid, in due Form of Law, was committed to the ſaid *Robert*; in which Caſe the ſaid *Francis* ought to have named the ſaid *Robert*, in his ſaid Bill, Adminiſtrator of the Goods and Chattels, Rights and Credits, which were the ſaid *William's* at the Time of his Death, who died inteſtate, and not Executor of the laſt Will and Teſtament of the ſaid *William*. And this he is ready to verify; wherefore he prays Judgment of the Bill aforeſaid, and that the ſaid Bill may be quaſhed; with this, That the ſaid *Robert* will verify, That he did not adminiſte-

Another Affid.t of ye Truth of a Dilatory Plea

In ye Kings Bench

Bot &c.

C. D. of &c. ye Deft in this Cause maketh oath that ye Substance matter of fact in ye plea hereto annext is true C. D.

Sworne &c

Note if ye Plea be for a Sheriff or other officer there need not be any affid.t but a Copy of ye Grant of ye office affixed to his Plea 1. Inst. 168. 250 7 Bit.

miniſter any Goods or Chattels, Rights or Credits of the ſaid *William*, before the ſaid Adminiſtration committed to him as aforeſaid.

Affidavit of the Truth of the dilatory Plea.

No dilatory Plea ſhall be received, unleſs the Party offering ſuch Plea does by Affidavit prove the Truth thereof, or ſhew ſome probable Matter to the Court, to induce them to believe that the Fact of ſuch dilatory Plea is true. *Stat.* 4 & 5 *Annæ* for Amendment of the Law.

Affidavit of the Truth of a Plea in Abatement.

Robert Parry of the *Strand* in the County of *Middleſex*, Perfumer, Defendant in this Cauſe, maketh Oath, and ſaith, that *William Hunt*, mentioned in the Plaintiff's Declaration in this Cauſe, died inteſtate, as this Deponent verily believes; and this Deponent ſays, he never heard or knew that the ſaid *William* made any Will, or appointed any Executor, and that on the 22d Day of *January* in the Year of our Lord one thouſand ſeven hundred and twenty-nine, Adminiſtration of all and ſingular the Goods, Rights, and Credits, which were the ſaid *William Hunt's* at the Time of his Death, was duly granted to this Deponent by *William* by Divine Providence Archbiſhop of *Canterbury*, Primate of all *England* and Metropolitan. And this Deponent ſaith, that he did not adminiſter any of the Goods, Chattels, Rights or Credits, which were of the ſaid *William Hunt's*, at the Time of his Death, before the Granting the ſaid Adminiſtration to this Deponent, as aforeſaid. And this Deponent further ſaith,

ſaith, that the Subſtance and Matter of Fact contained in the Plea hereunto annexed, is true.

Miſnomer *pleaded in Abatement.*

And the ſaid Lady *Honoria Gerard*, againſt whom the ſaid *Thomas* hath exhibited his Bill by the Name of Lady *Elizabeth Gerard*, otherwiſe *Garret*, comes in her proper Perſon, and defends the Force and Injury, and ſo forth; and prays Judgment of the ſaid Bill, becauſe ſhe ſays, that ſhe was baptized by the Name of *Honoria*, *to wit*, at the Pariſh of St. *Clement Danes* aforeſaid, and from her Baptiſm hitherto has been always known and named by that Name, without this, that ſhe the ſaid *Honoria* now is, or ever was, known or named by the Name of *Elizabeth*, as by the ſaid Bill is above ſuppoſed. And this ſhe is ready to verify; wherefore ſhe prays Judgment of the ſaid Bill, and that the ſaid Bill may be quaſhed.

Infra Abatem. in Abatem. *Infancy by Guardian.*

* And the ſaid *Anne*, who is within the Age of Twenty-one Years, by *R. C.* her Guardian, by the Court of our ſaid Lord the King now here ſpecially admitted, comes and defends the Force and Injury, and ſo forth, and prays Judgment of the ſaid Bill; becauſe, ſhe ſays, that ſhe the ſaid *Anne* was, on the Day of exhibiting the ſaid Bill, and is now, within the Age of Twenty-one Years, *to wit*, of the Age of nineteen Years, and not more, *to wit*, at *London* aforeſaid in the Pariſh and Ward aforeſaid; and that the ſaid *Richard* proſecuted his ſaid Bill againſt her the ſaid *Anne*, neither by her next Friend

N.B. it is ſaid there ought to be an affid.t of ye Truth of a Plea of Infra Abatem. when pleaded in Abatement but not when pleaded in Barr

Infra Ekalton in Barr

* AND the said J: P. by G: his Attorny comes & defends the force & injury when & &c
so forth and saith that the said R: B. ought not to have or maintain his said Action
thereof against him the said J: P. Because he saith that at the time of making the said
Sev.ll promises and undertakings in the said Decl: above Specified the the said J. was
within the age of twenty one years (to wit) of the age of nineteen years and no
more and this he is ready to verify Wherefore he prays Judgm.t whether the said
R. ought to have or maintain his said Action ag.t him

Repd. That 'twas for necessarys fit for his degree

AND the said R: B. Saith that notwithstanding any thing by the said J: P. above alledg.d
in his plea the said J. B. ought not to be ~~precluded~~ barred from having his said
Action against him the said J: P. because he saith that the said Sum of 30. Laid
out & expended by the said R: B. for the said J. P. was for Taylor's work done &
performed for the said J: P. and for materials and necessary things used in & about
such work and found & provided by the said R. B. for necessary Apparel and
Cloathing for the said J: P. Suitable to his degree (that is to say) at London
aforesaid in the parish and Ward aforesaid and this he is ready to verify.
Wherefore he prays Judgm.t and that his damages occasioned by the premis
may be awarded to him &c.

Edw.d Northey

Rejoinder. thereto

AND the said J. P. Saith that the said 30. mentioned by the said R. B. to have been laid out & expended
by him for Taylor's work done & performed for the said J. and for the materials & necessary
things by him likewise mentioned to have been found & provided by the said R. for the necessary
Apparel & cloathing of the said J. were not for necessary Apparel & cloathing of the said J. in
manner and form as the said R. hath above in his Replication alledged and of this he puts
himself upon the Country. And the said R. doth the like &c

J. Pemberton

faith, that the Substance and Matter of Fact contained in the Plea hereunto annexed, is true.

And the said Lady Rivers Grand, against whom the said Thing hath exhibited the Bill by the Name of Lady Elizabeth Grand, otherwise Garret, comes in her proper Person, and defends the Force and Injury, and it says [illegible] of the said Bill, towards the end, that she was baptized by the Name of Susanna, in the Parish of St. Clement [illegible] London, and from her Baptism hitherto has been always known and named by that Name, without this, that she the said Elizabeth ever was or is called by the Name of Elizabeth, as by the said Bill is alleged. And that she

Friend nor by her Guardian. And this ſhe is ready to verify; therefore ſhe prays Judgment of the ſaid Bill, and that the ſaid Bill may be quaſhed, and ſo forth.

When Pleas in Abatement to be pleaded.

Every Plea to the Juriſdiction of the Court, or in Abatement, ought to be pleaded before the Rule for pleading is out, and cannot be pleaded after any Imparlance, unleſs the Declaration is delivered ſo late in the Term, that the Defendant is not bound to plead to it that Term, or is delivered after Term; in both which Caſes, the Defendant may, within the firſt four Days inclufive of the next Term, plead any Plea in Abatement, or to the Juriſdiction of the Court, as of the precedent Term. But if ſuch Plea be not delivered or brought into the Office before the Expiration of the ſaid four Days, (whether a Rule to plead be given or not) ſuch Plea is not to be received; and *Sunday*, and any Day, on which the Court doth not ſit, is to be accounted as one of the four Days, unleſs it happens to be the laſt.

Tender to be pleaded in like manner.

Every Plea of Tender, or where the Defendant alledges he was always ready to do any particular Act, muſt be pleaded in like manner as Pleas in Abatement.

On Plea of Tender, Money to be brought into Court.

Where a Tender is pleaded, the Money muſt be brought into Court, and the Receipt of the Officer to whom paid, wrote on the Plea before it is filed.

Plea of Ancient Demeſne.

A Plea of Ancient Demeſne, being a Plea to the Juriſdiction of the Court, is not a Plea in Abatement within the Meaning of the Act for Amendment of the Law.

If

Outlawry not to be pleaded a ſecond time.

If the Defendant doth plead an Outlawry in Diſability of the Plaintiff, and it being reverſed, he ſhall not plead another in Diſability.

In Caſe of a dilatory Plea, the Court will order the Defendant to ſtand by it, or plead peremptorily on the Morrow, or inſtantly.

If the Defendant has pleaded a Dilatory or frivolous Plea, the Court upon Motion will order, That he ſhall ſtand by his Plea, or plead ſome other peremptorily on the Morrow, which ſhall not afterwards be waived; but towards the End of the Term, (becauſe otherwiſe there might not be ſufficient Time to give Notice of Trial) the Court requires the Defendant, if he will not abide by his Plea, to plead another inſtantly. But this the Court will not do, till the Time allowed by the common Rule to plead is expired.

Same with regard to frivolous Demurrers.

The Rule is the ſame with regard to frivolous Demurrers.

Pleas in Bar.

As Pleas in Abatement conclude to the Bill or Writ, and pray that the ſame may be quaſhed, Pleas in Bar conclude to the Action, and pray Judgment whether the Plaintiff ought to have or maintain his Action thereupon againſt the Defendant.

A Releaſe, an Acquittance, Acceptance of another thing, Statute of Limitations, and many other Matters, are pleadable in Bar.

Payment to a Bond after Day limited by the Condition, and before the Day of exhibiting the Plaintiff's Bill.

Payment to a Bond, according to the Statute of 4 & 5 Ann. c. 16.

And the ſaid *Nicholas* comes by *Arthur Stone* his Attorney, and defends the Force and Injury, when, and ſo forth, and craves Oyer of the ſaid Writing obligatory, and

it

It is no Plea for an Adm.r to say the Intestate dyed outlawed. Hutton rep.tr 53

it is read to him in theſe Words; that is to ſay, Know all Men, *&c.* And he likewiſe craves Oyer of the Condition of the ſaid Writing Obligatory, which is read to him in theſe Words; that is to ſay, The Condition of this Obligation, *&c.* which being read and heard, the ſaid *Nicholas* ſaith, That the ſaid *William* and *Elizabeth* ought not to have or maintain their ſaid Action thereof againſt him the ſaid *Nicholas*, becauſe he ſaith, that after the making of the ſaid Writing Obligatory, and after the ſaid firſt Day of *September*, mentioned in the ſaid Condition, and before the Day of the exhibiting of the Bill of them the ſaid *William* and *Elizabeth*, that is to ſay, on the 18th Day of *Januury* in the Year of our Lord 1735, at *London* aforeſaid, that is to ſay, in the ſaid Pariſh of St. *Mary le Bow* in the ſaid Ward of *Cheap*, he the ſaid *Nicholas* paid to the ſaid *William* and *Mary* as Adminiſtratrix, as aforeſaid, the ſaid Sum of 1315 *l.* 11 *s.* 6 *d.* contained in the ſaid Condition, according to the Form and Effect of the Statute in ſuch Caſe made and provided, together with all Intereſt then due thereon. And this he is ready to verify; wherefore he prays Judgment whether the ſaid *William* and *Elizabeth* ought to have or ſupport their ſaid Action thereof againſt him the ſaid *Nicholas*.

Replication.

And the ſaid *William* and *Elizabeth* ſay, That they, for any thing above alledged by the ſaid *Nicholas* in his ſaid Plea, ought not to be precluded from having their

their ſaid Action againſt him the ſaid *Nicholas*, becauſe they ſay that the ſaid *Nicholas* hath not paid to them the ſaid *William* and *Elizabeth* the ſaid Sum of 1315*l.* 11*s.* 6*d.* with all Intereſt thereon due, in ſuch Manner and Form as the ſaid *Nicholas* hath above alledged in his ſaid Plea; And this they pray may be inquired of by the Country; And the ſaid *Nicholas* doth ſo likewiſe. Therefore, *&c.*

Iſſue.

Did not Promiſe within ſix Years.

Non Aſſumpſit infra ſex Annos.

And the ſaid *R.* by *Martin Lantrow* his Attorney, comes and defends the Force and Injury, when, and ſo forth; and ſaith, That the ſaid *T.* ought not to have or maintain his ſaid Action thereof againſt him, becauſe he ſays, that he the ſaid *R.* did not at any Time within ſix Years next before the Day of the Exhibiting of the Bill of the ſaid *T.* undertake in Manner and Form as the ſaid *T.* above complains againſt him. And this he is ready to verify; wherefore he prays Judgment, whether the ſaid *T.* ought to have or maintain his ſaid Action thereof againſt him.

If by an Exr. or Admr. Say "That ye ſd. T. W. in his Life "time did not at any time "within 6 Yrs. &c.

Non Aſſumpſit infra Sex Annos is no Plea to an action on a note payable at a future Day, or to any Agreement promiſed, i.e. if to be performed on a future Day, but may be demurred to. Actio non accrevit infra 6 Annos is a Plea in theſe Caſes.

And the ſaid *T.* ſays, That he, by any thing by the ſaid *R.* above by pleading alledged, ought not to be barred from having his ſaid Action againſt him, becauſe he ſays, that the ſaid *R.* did at ſome Time within ſix Years next before the Day of exhibiting the Bill of the ſaid *T.* undertake in manner as the ſaid *T.* above complains againſt

Replication.

Ord: 446. for a Repd. to ye Sht. of Sussex vid. a Bill of middlesex was held not Examined on ye Roll

That Defts. were beyond Sea. fo: 95.

Actio Non Accrevit infra 6 Annos

Saith that ys. P. ought not to have or maintain his s. Action thereof ag.t him because he Saith that ys. Several Causes of action [if be in ye Decl.n] did not accrew nor did any of them accrew ~~within 6 Years~~ at any time within 6 Years next before ye day of Exhibitting of ye Bill of ys. P. ~~and this he is ready to verify~~ ~~and that above alledged in his Declaration~~ and this he is ready to verify — wherefore he prays judgment if ys. P. ought to have or maintain his said action thereof against him &c. vid. ye Repl.n infra

ys. this plea is used in Actions of Debt on lending or contract without Specialty, Actions of Debt for arrear of rent without Deed or other Specialty & also In Trespass

Non Assumpsit infra 6 Annos & Actio non accrevit infra 6 Annos. in one Plea

Saith that ys. P. ought not to have or maintain ~~the Same~~ his s. Action thereof ag.t him because he Saith ye ys. Bill of ys. R. was exhibitted ag.t him ys. P. in ye Term of ye Holy Trinity in ye ~~6~~ Year of ye Reign of our Sovereign Lord G. ye 2.d now King of Great Britain &c. (to wit) on ye 30.th day of May [first day of ye Term] in ye Year above.d & not before. And also That ye ys. P. did not on ye Day & Year in ys.d Declaration above mentioned or at any time within Six Years next before ye day of Exhibitting ye Bill aforesd undertake in manner & form as ys.d R. hath above complained against him And ys.d P. further Saith that ye ys.d Cause of action did not accrew at any time within Six Years next before ye Day of Exhibitting ys.d Bill of ys.d ~~R. above alledged in his Decl.n~~ And this he is ready to ~~verify~~ verify wherefore &c. [ut Supra

ys. Non Assumpsit infra 6 Annos is used in Actions on promises only. But where promises to be performed at a future Day & on Notes & Bills payable at a future Day this plea must be Actio non Accrevit infra 6 Annos & Non assumpsit infra 6 Annos

Statute of Limitations pleaded in Barr of an action of Trespass.

ys. Actio Non Accrevit — is not a proper plea in Trespass

ys. 3 Inst. Fo: 251. Stat of 21 Jac. pleaded to Action for words

_____ ought not to have &c. [ut Supra] because he Saith ye ys.d [ys.d] at any time within Six Years before ye Day of Exhibitting ye Bill of ys. [plte] is not Guilty of the promes in ye s.d Declaration laid to his charge as the s.d [plte] hath above complained ag.t him & of this he is ready to verify wherefore &c

Replication to Actio Non Accrevit infra 6 Annos

And the s.d R. Says that he by any thing above by ys.d P. above by him pleading alledged ought not to be barred from having his s.d Action against him because he Says That ys.d Several Causes of action did accrew to ye said R. within 6 Years next before ye Day of Exhibitting of ye Bill of him ys.d R. ag.t ys.d P. (to wit) on ye 12 Day of August in ye Year of our Lord 1[illegible] at P. in ye County aforesd. And this he prays may be inquired of by ye County &c the s.d P. & likewise

Turn over

Repl.ⁿ to ye Stat. of Limⁿ pleaded, That Plt.ff was beyond Sea &c.

ought not to be barred &c. [as before] Because he saith that the sd Cause of Action in ye sd Declaration above before mentioned — did accrew to him ds. [Plt.ff] on ye 1st. day of August in ye 42nd year of ye Reign of &c. (to wit) at L. aforesd in ye parish & ward aforesd And that the ds. [Plt.ff] at ds. time when ye sd Cause of action of ds. [Plt.ff] in form aforesd accrewed was abiding dwelling & inhabitting in Parts beyond ye Seas & did there continually afterwards & until ye 5. day of April in ye 43rd year of ye Reign [&c.] abide dwell & inhabitt on which day & not before he ds. [Plt.ff] returned into ye Kingdom of England — (to wit) at . . . . . And ds. [Plt.ff] further saith that he ds. [Plt.ff] did within 6 years next after ye aforesd Return of him ye sd (Plt.ff) into ye Kingdom of England as aforesd (to wit) on ye 22nd day of Oct.r in ye 43rd year of ye Reign of (&c.) exhibitt his said Bill in ye Court of our said Lord ye King here against ds. [Deft.] for ye sd Cause of Action in form aforesd And this he is ready to verify, wherefore &c.

G. S.

Rejoinder to ye above

And ye aforesd [Deft.] Protesting yt ye sd (Plt.ff) was not at ye time when ye sd Cause of Action of ye sd [Plt.ff] accrewed abiding dwelling & inhabitting in parts beyond ye Seas as ye sd [Plt.ff] hath above alledged in his replication The sd [Deft.] for Plea saith yt ds. (Plt.ff) did not exhibitt his sd Bill ag.t him ds. (Deft.) for ds. Cause of Action within 6 years next after ye return of ds. [Plt.ff] into ye Kingdom of England in manner & form as ds. [Plt.ff] hath above by pleading alledged, and of this he puts himself on ye Country &c. H. G.

Vide the Stat. of 21. Jac. 1st. c. 16. Saves ye Plts right if 2 beyond Sea, but not where ye Deft was beyond Sea, Therefore ye Stat. 4 & 5 Ann. c. 16. §. was made also to save Plts right if Deft to beyond Sea. & ye above Repl.ⁿ will do where Deft was beyond Sea.

gainſt him. And this he prays may be inquired of by the County; and the ſaid *R.* does likewiſe the ſame. Therefore, *&c.* *Iſſue.*

And the ſaid *Margaret*, by *J. A.* her Attorney, comes and defends the Force and Injury, when, and ſo forth, and craves Oyer of the ſaid Writing Obligatory; and it is read to her in theſe Words, that is to ſay, Know all Men, *&c.* And ſhe craves Oyer of the Condition of the ſaid Writing Obligatory, which is read to her in theſe Words, that is to ſay, The Condition of this Obligation is ſuch, that if the above bounden *C. Dunſter*, *D. Wright*, and *M. Jones*, or any of them, their, or any of their Heirs, Executors, or Adminiſtrators, do well and truly pay, or cauſe to be paid unto the above named *Elizabeth Hayes*, her Executors, Adminiſtrators or Aſſigns, the full Sum of 100 *l.* with lawful Intereſt of good and lawful Money of *Great Britain*, on the fifth Day of *December* now next enſuing, then this Obligation to be void, or elſe to remain in full Force and Effect; which being read and heard, the ſaid *Margaret* ſays, that ſhe ought not to be charged with the ſaid Debt, by Virtue of the ſaid Writing Obligatory; becauſe ſhe ſays, that after the twenty-ninth Day of *December* in the Year of our Lord 1713. *to wit*, on the fifth Day of *July* in the Year of our Lord at the ſaid Pariſh of St. *Martin* in the Fields, it was corruptly agreed between the ſaid *Elizabeth* and the ſaid *Margaret* and one *C. Dunſter* and *D. Wright*, that the ſaid *Elizabeth* ſhould

The Statute of Uſury pleaded.

Oyer.

ſhould advance and lend the ſaid *Margaret C.* and *D.* the Sum of 100 *l.* and ſhould give Day of Payment thereof unto the fifth Day of *December* next enſuing, and that the ſaid *Margaret, C.* and *D.* for the Loan of the ſaid 100 *l.* and for giving Day of Payment thereof by the Time aforeſaid, ſhould give and pay to the ſaid *Elizabeth* the Sum of five Pounds and five Shillings, upon the ſaid fifth Day of *July*, for the Intereſt thereof, and for giving Day of Payment of the ſaid one Hundred Pounds; which ſaid five Pounds and five Shillings exceed the Rate of five Pounds for the Intereſt of one Hundred Pounds for one whole Year, contrary to the Form of the Statute in ſuch Caſe lately made and provided; And afterwards, *to wit*, on the ſaid fifth Day of *July* in the Year and at the Place in the Declaration above-mentioned, the ſaid *Elizabeth*, in Proſecution of the ſaid corrupt Agreement, advanced and lent to the ſaid *Margaret, C.* and *D.* the ſaid 100 *l.* and the ſaid Writing in the ſaid Declaration above-mentioned was by the ſaid *Margaret, C.* and *D.* ſealed, and as their Deed delivered to the ſaid *Elizabeth*; and they the ſaid *Margaret, C.* and *D.* then and there, *to wit*, on the ſaid fifth Day of *July* in the Year and at the Place in the ſaid Declaration above-mentioned, paid to the ſaid *Elizabeth* the ſaid Sum of five Pounds and five Shillings, for Intereſt of the ſaid one Hundred Pounds, and for giving Day for Payment thereof unto the ſaid fifth Day of *December*

cember then next enſuing, in Performance, and according to the Form and Effect of the ſaid corrupt Agreement, by which the ſaid Writing in the ſaid Declaration above-mentioned, by Force of the Statute in ſuch Caſe made and provided, is void in Law. And this ſhe is ready to verify; and therefore ſhe prays Judgment, whether ſhe ought to be charged with the ſaid Debt, by Virtue of the ſaid Writing, and ſo forth.

Replication, that it was for a true and juſt Debt.

And the ſaid *Elizabeth* ſays, that ſhe, by any thing by the ſaid *Margaret* above by Pleading alledged, ought not to be barred from having her ſaid Action thereof againſt the ſaid *Margaret*, becauſe ſhe ſays, that the ſaid *Margaret* made, ſealed, and as her Deed delivered to the ſaid *Elizabeth* the ſaid Writing Obligatory in the ſaid Declaration mentioned, for a true and juſt Debt due from the ſaid *Margaret* to the ſaid *Elizabeth*; without this, that it was corruptly agreed between the ſaid *Elizabeth* and the ſaid *Margaret* and one *C. Dunſter*, and *D. Wright*, in Manner and Form as the ſaid *Margaret* has above by pleading alledged. And this ſhe is ready to verify; wherefore ſhe prays Judgment, and that her ſaid Debt, together with her Damages by Occaſion of the Detaining the ſaid Debt, may be adjudged to her.

Rejoinder and Iſſue.

And the ſaid *Margaret*, as before, ſays, that it was corruptly agreed between the ſaid *Elizabeth* and the ſaid *Margaret* and one *C. Dunſter* and *D. Wright*, in Manner and Form as ſhe the ſaid *Margaret* has a-

bove by Pleading alledged; and of this ſhe puts herſelf upon the Country; and the ſaid *Elizabeth* likewiſe, and ſo forth. Therefore let a Jury come thereupon before our Lord the King at *Weſtminſter* on next after and who are in no wiſe of kin either to the ſaid *Elizabeth*, or to the ſaid *Margaret*, to take Cognizance upon their Oaths of the whole Truth of the Premiſſes; becauſe as well the ſaid *Margaret* as the ſaid *Elizabeth* have put themſelves upon that Jury. The ſame Day is given to the Parties aforeſaid, at the ſame Place.

Iſſue. Venire *awarded.*

Demurrers.

Demurrer to a Declaration. with Cauſes.

AND the ſaid *Nicholas* by his Attorney comes and defends the Force and Injury, when, *&c.* and ſaith, that the ſaid Declaration, and the Matter therein contained, are not ſufficient in Law to maintain the ſaid Action againſt the ſaid *Nicholas*, to which ſaid Declaration the ſaid *Nicholas* hath no need, nor is he obliged by the Law of the Land to anſwer: Wherefore for want of a ſufficient Declaration in this Caſe the ſaid *Nicholas* prays Judgment, and that the ſaid Declaration may be quaſhed; and the ſaid *Nicholas*, according to the Statute, ſhews the Cauſes of Demurrer following, *to wit*, that it does not appear, nor is it alledged in the ſaid Declaration, whether

Cauſes.

the

Demurrers

N.B the same Course is to be observed in Demr. as in Issues with regard to an Imparlance, viz.) If y Demr. be of y same Term with Decl. then there is no imparlance and y Entry begins as a Plea thus ")

Demr. in abatemt. to a Decl. without Cause

And y.d N. by T. B. his attorny comes & Defends y force Injury & damages &c when & where he ought to Defend when & where y Court will consider thereof and y.d N. Prays Judgmt. of y.e ✱ Decl. because he Saith y.t y.e ✱ Decl. and the matter therein contained are not Sufficient in Law to maintain y.d Action ag.t y.d N. To which y.d ~~Decl.~~ ✱ Decl. the said N. hath no need nor is he obliged by y Law of y Land to answer [and this he is ready to verify] Wherefore for want of a Sufficient ✱ Decl. in this Case the y.d N. Prays Judgmt. and that the y.d ✱ Decl. may be quashed &c.

If it be in abatemt. of a Bill, then instead of y word Decl. say Bill at marke ✱

Joinder.

And the said A. Saith that notwithstanding anything above alledged by the y.d N. the y.d Declaration ought not to be quashed because he Saith y.t y.e y.d Decl. and y matter therein contained are good and Sufficient in Law for him y.d A. to maintain his said Action ag.t y.d N. which y.d matter contained in y.e y.d Decl. y.d A. is ready to verify and prove in such manner as y Court shall think fit and because y.d N. hath made no answer thereto nor hitherto in any manner denyed y same y.d A. prays Judgmt. and that his Damages occasioned by y premises may be awarded to him

the ſaid *James Kirwan died Inteſtate* or not; nor is it alledged in the ſaid Declaration as it ought to be, that *Adminiſtration* of the *Goods and Chattels*, which were of the ſaid *James Kirwan at the Time of his Death* was committed to the ſaid *Elizabeth*, and alſo that the ſaid Declaration is uncertain, and wants Form.

Demurrer in Bar to a Declaration.

And the ſaid *John Sandford*, by *H. G.* his Attorney, comes and defends the Force and Injury, when, and ſo forth, and ſays, that the ſaid Declaration, and the Matter therein contained, are not ſufficient in Law for the ſaid *Joſeph* to have and maintain his ſaid Action againſt the ſaid *John*; to which ſaid Declaration the ſaid *John* has no need, nor is he bound by the Law of the Land in any manner to anſwer. And this he is ready to verify; wherefore for want of a ſufficient Declaration in this Caſe, the ſaid *John* prays Judgment, and that the ſaid *Joſeph* may be barred from having his ſaid Action againſt him, and ſo forth; and for Cauſes Cauſe of Demurrer in Law, the ſaid *John Sandford*, according to the Form of the Statute, and ſo forth, ſhews here to the Court the following Cauſes, *to wit*, That the ſaid two ſeveral Cauſes of Action, *to wit*, of Treſpaſs, and of Treſpaſs on the Caſe, in the ſaid Declaration contained and above ſhewn, do not lie together, nor ought to be contained in one and the ſame Declaration; and that in the ſaid Declaration there are diverſe empty Spaces wanting

Words to ſignify and expreſs Days, Months, Years, and other Things.

Day given to the Plaintiff to join in Demurrer, who made Default, and was Non-proſſed.

And upon this the ſaid *John* prays, that the ſaid *Joſeph* may join with him in Demurrer; and thereupon a Day is given by the Court of our Lord the King now here, for the ſaid *Joſeph* to be before our Lord the King at *Weſtminſter*, until next after next enſuing, to join with the ſaid *John* in the ſaid Demurrer in Law; and the ſaid *Joſeph* at that Day ſolemnly required came not, nor did he further proſecute his ſaid Bill againſt the ſaid *John*, but made Default; It is therefore conſidered, that the ſaid *Joſeph* take nothing by his ſaid Bill; but that he and his Pledges of Proſecuting, *to wit*, *John Doe* and *Richard Roe* be thereupon in Mercy; and that the ſaid *John* go thereupon without Day, and ſo forth: And it is further Conſidered by the Court of our Lord the King now here, that the ſaid *John* do recover againſt the ſaid *Joſeph* four Pounds for his Coſts and Charges by him about his Defence in this Behalf ſuſtained, adjudged to the ſaid *John* by the Court of our Lord the King, according to the Form of the Statute in ſuch Caſe lately made and provided, and ſo forth, and that the ſaid *John* have thereof Execution, and ſo forth.

Plaintiff makes Default.

Judgment.

Joinder in Demurrer to a Plea in Bar.

And the ſaid *Joſeph* ſays, that the Plea by him the ſaid *Joſeph* in Manner and Form above pleaded, and the Matter in the ſame contained, is good and ſufficient in the Law to Bar the ſaid *John* from having his

Demurrer

Joinder to a Dem.r in Bar of a Dr. &c. and: mark ⊥ infra

A Dem.r to a plea in Bar

The def.t A. saith that notw.th.d.g any thing above alled.d by the def.t Joseph in his Plea, the def.t ought not to be precluded from having his Action thereon ag.t him because he saith that the def.t Plea in such man.r & form as the same is pleaded by the def.t J. & matter therein contained are insufficient in law to preclude him the def.t from having his Action ag.t the def.t A. to which said Plea the def.t A. is under no necessity nor in any wise bound by the Law of the Land to answer and this he is ready to verify wherefore by reason of the insufficient plea in this particular the def.t A. prays Judgment and that his Damages occasioned by the premises may be awarded him &c.

Joinder.

And the def.t J. saith that the def.t plea is such man.r & form as the same is above pleaded by the def.t J. and matter therein contained are good & sufficient in law to preclude him the said A. from maintaining his Action thereon ag.t the def.t J. which he is ready to verify and the said plea & matter therein contained the def.t J. is ready to verify and prayes as the Court &c. and because the def.t A. hath not answered the def.t Plea nor hitherto in any manner denied the same the def.t J. as before prays Judgment and that the def.t may be hence dismissed from going without his said Action thereon ag.t him &c.

concluded

Demurrers.

† When you Enter a Demurrer upon the Roll or Deliver the Demurrer book to ye attorney on ye other side you must go on after ye Joinder in Demurrer — with ye Continuance of Cur. advisare vult.

Demr. to a Repl. } Said the said Pl. saith yt ye Defts Plea in Such manr. & form as ye Defts. Att hath — pleaded & Same by way of Replyn & ye matter therein contained are not Sufficient in Law for him ye Deft to maintain his said Action agt ye Defts Pl. to which Repl. Replication ye Defts Pl. has no need nor is any wise by ye Law of ye Land bound to Answer and this he is ready to verify Wherefore for want of a Sufficient Replication in this particular the Defts Pl. as before prays Judgment and that ye Pl. may be Stopped from going on with his said Action thereon agt him &c.

Demr. to a Rejoinder } And ye Defts. Att. Saith that ye Plea of ye Defts Pl. in Such manr & form as ye Defts Pl. hath pleaded & Same by way of Rejoinder & ye matter therein contained are not Sufficient in Law to Stop ye Defts Att from going maintaining his said Action agt ye Defts Pl. wch Defts plea & ye matter therein contained ye Defts Att has no need nor in any wise bound by ye Laws of ye Land to answer and this he is ready to verify Wherefore & for want of a Sufficient — Rejoinder in this particular the Defts Att as before prays Judgmt & yt his damages occasioned by ye premises may be awarded to him &c.

Joinder } And ye Defts Pl. Saith yt ye Defts Plea of ye Defts Att in Such manr & form as he hath pleaded ye Same by way of Rejoinder is in Law good & Sufficient to Stop ye Defts Att from maintaining his Defts action agt ye Defts Pl. wch Defts plea & ye matter therein contained he ye Defts Pl. is ready to verify & prove as ye Court & he saith And because ye Defts Att hath not answered ye Defts Plea nor in any manr denied ye Same he ye Defts Pl. as before prays Judgmt. and that ye Defts Att may be precluded from maintaining his said Action agt him &c.

his ſaid Action againſt him the ſaid *Joſeph*; which ſaid Plea, and the Matter therein contained the ſaid *Joſeph* is ready to verify and prove as the Court, and ſo forth; and becauſe the ſaid *John* has not anſwered the ſaid Plea, nor hitherto any ways denied it, the ſaid *Joſeph* prays Judgment, and that the ſaid *John* may be barred from having his ſaid Action againſt him the ſaid *Joſeph*, and ſo forth. But becauſe the Court of our ſaid Lord the King now here, is not yet adviſed what Judgment to give of and concerning the Premiſſes, a Day is given to the ſaid Parties, that they be before the Lord the King at *Weſtminſter*, on next after to hear their Judgment thereon, becauſe the ſaid Court of our Lord the King now here, is not yet adviſed thereof.

Continuance by Cur. adviſare vult.

The Defendant cannot waive the General Iſſue or General Demurrer, and inſtead thereof give a Special Plea or Demurrer, or Special Demurrer; but if a Special Plea, or Special Demurrer be given in, and the Book is made up and delivered to the Defendant's Attorney, he may ſtrike out the Special Plea or Special Demurrer, and Return it with the General Iſſue or General Demurrer.

General Iſſue, or General Demurrer cannot be waived.

Special Plea or Special Demurrer may.

Where any Perſon ſhall plead a Judgment or Matter of Record in the ſame Court, the Party ſo pleading the ſame ſhall upon Demand give the Attorney for the Plaintiff a Note in Writing of the Term, and Number-Roll whereon ſuch Judgment

If a Judgment pleaded, Term and Number-Roll to be given, if demanded.

or Matter of Record is entered and filed; and in Default thereof ſuch Plea is not to be received.

To plead ſeveral Matters no need of an Affidavit.

An Affidavit is not neceſſary in order to plead two or more Matters, but the Court expects to be informed what the Matters be that are deſired to be pleaded, in order to judge whether they are proper.

When bound to plead an Iſſuable Plea, may demur to the Replication.

If the Defendant be bound by Rule of Court, or Order of a Judge, to plead an Iſſuable Plea, and take Notice of Trial, and accordingly he pleads an Iſſuable Plea, and the Plaintiff replies, he may notwithſtanding demur to the Replication without Breach of the Rule or Order.

What Time the Party has on Rules given by the Secondary.

On all Special Rules given by the Secondary, as to Reply, Rejoin, Surrejoin, Rebut, plead in Bar, join in Demurrer, or to enter the Iſſue or Demurrer, on the Part of the Defendant, the Party who is to do the Act is to be ſerved with a Copy of the Rule, and hath four Days Time, excluſive after the Service of a Copy of ſuch Rule, to Reply, Rejoin, *&c.* And if Judgment be ſigned, or other Proceedings had within that Time, the ſame will be ſet aſide, and *Sunday*, or any Holiday on which the Court doth not ſit, not being the laſt of thoſe four Days, is to be reckoned a Day within thoſe Rules.

Terms Notice to reply, &c. If no Proceedings for four Terms.

If a Cauſe has continued four Terms without Proſecution before Iſſue joined, each Party ſhall have a whole Term's Notice to Reply, Rejoin, *&c.* unleſs the Cauſe has been ſtayed by Injunction or Privilege.

If

To Compel a Pltf to reply get a 4 day rule from ye Master, which enter wth ye Clk of ye Rules, & serve it on Pltfs attorny by deliv^g him a Copy (1: 4. is paid for ye Rule) and if he does not reply in time, Demand having been made of Repl^n, Sign non pros.

To Give a Rule to Rejoin — Carry Draft of your Replication to ye Masters Clerk who will write a 4 day Rule on ye back of ye Draft of Replication thus". . . . . next after the . . . . . of . . . . . To rejoin. Then carry it to Mr Cooper the Clerk of ye Rules to be entered, & he writes under ye Rule Rule Entered. Then write a true Copy of ye Rule on ye Back of ye fair Copy of Replication to be delivered & deliver it: Nothing is paid ye Masters Clerk, but you pay ye Clerk of ye Rules 0: 1: 4 as for other Rules.

* To make up Paper book, Carry Decl.n to Cl.k of ye Papers (having a Close Copy for yr self) and he will thereforn make up paper book, and give a rule thereon for Deft to receive & return it to be entred on Roll in 4 days, Pay Cl.k of ye papers 10d for: besides Stamps (deducting wt you p.d him for Plea) — Deliver — paper book to Defts attorny with notice of Tryal on ye Back who is to return it in 4 days (pay you 8 ffs.d for his part, or Judgt may be Signed

You pay ye Cl.k of ye papers, for paper Books thus (viz.t) 8 ffs.d. for Decl.n besides duty
1 ffs: for Plea, Repd, Rejoind.r &c. besides duty

N.B. If you take an Office of Plea or Rejoinder &c. You deduct wt you p.d for ye same when you pay for paper book. 6.d ffs: is p.d for office Copy of Plea or Rej.d including Duty.

On Returning paper Book Defts attorny is to pay you for his part 8.d a ffs.d for all his own pleadings & 4 ffs.d for all ye Decl.n, Repd.s (& rest of Plts Pleadings tho.e if Decl.n was p.d for on ye Delivery he is not to pay any thing for it in ye paper book

N.B.

N.B.

If the Defendant in his Plea makes a *Profert in Curiam* of any Deed or Writing, the Plaintiff may pray Oyer of ſuch Deed or Writing, and ſhall have a Copy thereof delivered to him, paying for it 4 *d. per* Sheet, beſides the Duty; and ſhall have as much Time to reply after he receives it as he had at the Time of Demanding ſuch Oyer. *What Time Plaintiff has to reply after Oyer of Deed mentioned in Plea.*

✕ Special Pleadings that ought to be put in the Office of the Clerk of the Papers, or Copies of them ought not to be delivered by one Attorney to another, but muſt be left with the proper Clerk of the Papers, who is to make Copies thereof, ſigned by him. If the Plaintiff's Name begins with *A.* to be left with Mr. *Benton*, if with *B.* to be left with Mr. *New*, and ſo alternately. vid. three marks ✠ infra *Special Pleadings to be left with the Clerks of the Papers; who is to make and ſign Copies.*

Every ſuch Plea or Demurrer is to be ſigned by Counſel, and ought not to be received by the Clerk of the Papers, unleſs ſo ſigned; and every Copy of ſuch Plea or Demurrer is to be ſubſcribed with the Name of the Counſel who ſigned the ſame. *Eaſter* 18 *Car.* 2. *Special Plea and Demurrer to be ſigned by Counſel.*

✠ Every Clerk or Attorney of this Court may, according to the antient Rules of this Court, make up Iſſues and Demurrers in the ſeveral Caſes following, *viz.* Every Iſſue that may be given on the Book-ſide, Not Guilty to a new Aſſignment, The Bar of *Son Frank Tenement*, *Comparuit ad Diem* to a Sheriff's Bond, *Nul Tiel Record* to a *Scire facias*, or Action of Debt on a Judgment, a *In what Caſes Attornies may make up Iſſues or Demurrer Books.*

NB. If ye proceedings are by Origin.ª the Attorney make for ye Pltf hath ye liberty of making up all ye Special pleadings thereon himself, without applying to ye Clerk of ye papers.
NB. The practice is otherwise for how can you then get ye 4 Day rule on paper book from ye Clerk of ye papers for Defts attorney to return ye same

General Demurrer to a Declaration. In an Action of Covenant, where the Defendant in his Bar concludeth, *Et de hoc ponit ſe ſuper Patriam*; every Special *Non eſt factum*; every *Son Aſſault* Demeſne; all Iſſues and Demurrers upon every Writ of Error, *Scire facias & Audita querela*; all Repleaders, or other Things formerly entered upon Record; but in no other Caſes whatſoever.

In what Caſes the Plaintiff may make up the Book without giving Rule to rejoin.

In all ſpecial Pleadings, where the Plaintiff takes Iſſue upon the Defendant's pleading, or traverſes the ſame, or demurreth, ſo as the Defendant is not let in to alledge any new Matter, there the Plaintiff may make up the Paper-Book, without giving a Rule with the Secondary to rejoin.

Book made up in Term, or within 4 Days after, to be returned in 4 Days.

If a Paper-Book be made up, and delivered in Term-time, or within 4 Days excluſive after Term, with a Rule thereon, given by the Clerk of the Papers, for bringing of the ſame Book to be enrolled, and the Defendant's Attorney doth not, within 4 Days after the Delivery thereof, bring back the Book, and join with the Plaintiff in the Special Iſſue or Demurrer made up, or waive his Special Plea, and give the General Iſſue or Demurrer, to any Special Iſſue tendered, and pay for entring the Pleadings on his Part, Judgment may be ſigned and entered, as if no Plea had been pleaded.

If Plea comes in late, and the Book be made up within 8 Days after, to be alſo returned within 4 Days.

But where a Plea is not put in in Time, ſo that a Paper-Book may be made and delivered in Term, or within 4 Davs after; yet if it be made up and delivered within 8 Days after the Term, the Defendant's Attor-

Attorney ſhall be obliged to take it, and return it again within 4 Days after the Delivery, or elſe the Plaintiff's Attorney may ſign Judgment.

If a Plea is pleaded in Term, or in Time after the Term, and the Paper Book is not made up and delivered within 8 Days excluſive after Term, if it be an Iſſue to be tried in *London* or *Middleſex*, or a Demurrer, the other Party is not bound to deliver back the Book, but hath ſo to do at any Time within the firſt 4 Days of the next Term; but if it be an Iſſue to be tried at the Aſſizes, the Defendant's Attorney ſhall deliver back the Book within 4 Days after the Delivery thereof, and pay for entring his Part, and join in the Special Iſſue, or give the General Iſſue, and take Notice of Trial, or elſe the Plaintiff's Attorney may ſign Judgment by Default, as if the Defendant had not pleaded at all.

If Book not delivered within 8 Days after Term, if in London *or* Middleſex, *or a Demurrer, not to be returned till 4 Days in next Term.*

If to be tried at the Aſſizes, to be returned in 4 Days.

But in all Caſes, if the Plaintiff's Attorney accept the Book after the limited Time, he cannot ſign Judgment.

If Plaintiff's Attorney accept the Book after the 4 Days, he cannot ſign Judgment.

If the Paper Book be of an Iſſue in Fact, the 4 Days for keeping the Paper Book are to be reckoned excluſive of the Day of the Delivery: If of a Demurrer, an Iſſue in Law, the 4 Days are incluſive.

Where the 4 Days are excluſive, where incluſive.

Upon Delivery of any Paper Book wherein an Iſſue is joined, and Notice of Trial given on the back of the Book, if the ſame be afterwards waived, and the General Iſſue given, the Notice which was given for the Trial

Notice of Trial on Special Iſſue, to ſerve for General Iſſue.

Trial of the Special Iſſue, ſhall ſerve for Notice of the General Iſſue.

Notice of Trial to ſerve for Enquiry when Book returned with a Demurrer.

Where the Plaintiff upon any Pleading of the Defendant tenders an Iſſue, and the Book is made up and delivered with Notice of Trial, and the Defendant ſtrikes out the *Similiter*, and returns the Book with a Demurrer, if Judgment for the Demurrer be given for the Plaintiff, the ſame Notice which was given for the Trial of the Iſſue, ſhall ſerve for executing the Writ of Inquiry. 8 *Geo.* 1. But then the Plaintiff ought to give Notice of the Hour and Place of executing the Inquiry.

In all Paper Books the Names of the Counſel to be inſerted.

In all Paper Books to be made up by the Clerk of the Papers, he ought to ſubſcribe the Name of the Counſel who ſigned the Pleadings, as well on the Part of the Plaintiff as of the Defendant; and in all Books to be delivered to the Judges, the Names of the Counſel who ſigned the Pleadings ought alſo to be ſubſcribed. *Eaſter* 18 *Car.* 2.

Books to be delivered to the Judges 2 Days before the Argument.

The Books ought to be delivered to the Judges 4 Days, but for a long Time the Practice has been to deliver them only two Days before the Day appointed for the Argument. *Eaſter* 2 *Ja.* 2.

Party who does not deliver Books, not to be heard.

If one of the Parties delivers all the Paper Books, on the other Party's neglecting to deliver any, the Party neglecting will not be heard when the Cauſe comes on to be argued.

How the Books are to be delivered.

The Books for the Chief Juſtice and Senior Puiſne Judge, ought to be deliver-

ed

N3 The Clerk of ye Papers Enters Causes for Argument, in the Paper of Causes, and ye Term & No. Roll on wch ye Pleadings are Entered must be mentioned in ye paper of Causes.

ed by the Plaintiff, and thoſe for the two other Judges by the Defendant.

Cauſes ſtanding over, are to be entered with the Clerk of the Papers, 7 Days after Term.

Every Cauſe, which ſtands over for the Reſolution of the Court, or to be ſpoke to further in another Term, ought to be entered with the Clerk of the Papers within 7 Days after the Term, that a Paper of them may be prepared in Time for the Judges, and in Neglect of ſo doing, not to be entered without Leave of the Court. *Eaſter* 1658.

This Rule has been diſuſed of late Years.

If Plaintiff demurs, and Defendant joins, and Plaintiff does not make up the Paper Book, the Defendant may on a Rule given.

If the Plaintiff demurs, or takes Iſſue on the Defendant's Plea, Rejoinder or Rebutter, and the Defendant in Caſe of a Demurrer joins therein, and Plaintiff will not make up the Book, and enter it on Record, the Defendant may make up the Book, and enter it, if he pleaſes, on a Rule given by the Secondary for that Purpoſe. See Rule, *Eaſter* 11 *W.* 3.

The Method of proceeding when made up by Defendant.

When the Book is made up by the Defendant, he muſt deliver it to the Plaintiff, and pay him for the Entry of his the Defendant's Pleadings, becauſe the Plaintiff may perhaps enter the Iſſue, as he has a Right to do at any Time before the Expiration of the Rule, to enter it on the Part of the Defendant, which Rule ought to be ſerved on the Plaintiff, at the ſame Time the Book is delivered to him. If the Plaintiff does not enter the Iſſue, the Defendant may at the Expiration of the Rule, and give Notice of Trial by Proviſo; but then the Plaintiff ought to return to the Defendant

fendant the Money he received from him for the Entry on his Part.

Of making up Iſſues.

To make up an Iſſue of Michaelmas *Term from a Declaration of* Trinity *Term, or ſome other precedent Term.*

How to enter iſſues and Judgm^ts on 2 Roll v. 136. to 145.

Of Michaelmas *Term in the twelfth Year of the Reign of* George *the Second, now King of* Great Britain, *and ſo forth.*

Roll ... Anthonie & Briggs

Memorandum of a Declaration of another Term.

Middleſex. BE it remembred, That in the Term of the Holy *Trinity* laſt paſt, before our Lord the King at *Weſtminſter*, came *A. B.* by *R. A.* his Attorney, and brought in the Court of our ſaid Lord the King then there, his certain Bill againſt *C. D.* being in the Cuſtody of the Marſhal of the *Marſhalſea* of our ſaid Lord the King, before the King himſelf, of a Plea of Treſpaſs upon the Caſe, [Treſpaſs, and Aſſault, or Debt, *as the Action is*;] And there are Pledges of proſecuting, *to wit*, *John Doe* and *Richard Roe*, which ſaid Bill follows in theſe Words: *Middleſex*, to wit *A. B.* complains of *C. D.* being in the Cuſtody of &c. [ſo ſet forth the Declaration *in hæc verba* to] And thereupon he brings Suit, and ſo forth.

as in Decl.

Then on a new Line the Imparlance.

And

Memorandum if issues are made up of any other issuable Term the Clerk of ye Nisi prius will be paid for it on ~~Entring~~ Making ye record, Therefore in Country Cause it is best to make Joine issue in ~~Hill~~ Easter Trinity Term, for if they are joined before ye cause will not in ye least be forwarded. —

And now at this Day, *to wit*, *Monday* next after 3 Weeks from the Day of St. *Michael*, [the firſt Day of the Term the Iſſue is of] in this ſame Term, to which Day the ſaid *C. D.* had Licence to imparle to the ſaid Bill, and then to anſwer, and ſo forth, before our Lord the King, at *Weſtminſter*, comes as well *A. B.* by his Attorney aforeſaid, as the ſaid *C. D.* by *A. S.* his Attorney; and the ſaid *C. D.* defends the Force and Injury, when, and ſo forth, and ſays, That, [here inſert the Plea to] And of this he puts himſelf upon the Country; And the ſaid *A. B.* does the like. Therefore let a Jury thereupon, before our Lord the King at *Weſtminſter* next after [ſome Day in the Term the Iſſue is, and before the Trial] who are in no wiſe of Kin either to the ſaid *A. B.* or to the ſaid *C. D.* to take Cognizance upon their Oaths of the whole Truth of the Premiſes; becauſe as well the ſaid *C. D.* as the ſaid *A. B.* have put themſelves upon that Jury. The ſame Day is given to the Parties aforeſaid, at the ſame Place.

Imparlance.

The Return of the Venire.

If the Declaration and Iſſue are of the ſame Term, you muſt enter it thus.

Middleſex. BE it remembered, That on *Monday* next after three Weeks from the Day of St. *Michael*, [the firſt Day of the Term] in this ſame Term, before our Lord the King at *Weſtminſter*, came *A. B.* by *R. A.* his Attorney, and brought in

Memorandums of the ſame Terms.

in the Court of our ſaid Lord the King ~~then there~~ now here, his certain Bill againſt *C. D.* being in the Cuſtody, [as in the other.]

There is no Imparlance in this Caſe, but after your Declaration you enter the Plea with a new Line thus:

And the ſaid *C. D.* by *R. R.* his Attorney, comes and defends the Force and Injury, when and ſo forth, and ſays *&c.* as before.

If the Declaration be of above four Terms ſtanding, you ſay, Be it remembered, that heretofore, *to wit*, of the Term of St. *Hilary* in the tenth Year of the Reign of our Sovereign Lord *George* the Seeond, now King of *Great Britain*, and ſo forth, came *A. B.* by *R. A.* his Attorney, *&c.*

Memorandum of above four Terms.

Eight Days Notice of Trial and Enquiry ſufficient. Except.

Eight Days excluſive is ſufficient Notice of Trial, and of executing a Writ of Inquiry in all Caſes whatſoever; excepting Cauſes in *London* and *Middleſex*, where the Defendant lives forty computed Miles and upwards from *London*, when fourteen Days Notice muſt be given; and excepting Cauſes wherein no Proceedings have been had for four Terms after Iſſue joined; in which Caſe a Term's Notice muſt be given, and ſo likewiſe when by Proviſo, unleſs the Cauſe has been ſtayed by Injunction or Privilege.

Sunday *one of the Days.*

Sunday is to be accounted a Day in theſe Notices, ſo it be not the Day on which the Notice is given.

* By ye Stat. of 14th G. 2^d. ch. 17 It is enacted that where a Deft resides above 40 Miles from London or Westminster he must have 10 days notice in writing of Tryal of any Indictment Information or Cause whatsoever, and 6 days notice in writing of Countermand

Manner of passing Record

Ingross Record on double ½ Crown Stampt parchm.t. get a Number Roll and make an incipitur of Record thereon & Carry them & issue paper to Mr Lantrow who takes for Nothing issue not exceeding 10 fol. 0–3–6. and 1. for every 6. more besides for post Terminum 0–3–0. ℔s. The charge is now alter'd. 3 fol. for a whole issue. 1. for docketing & 3. for all post Negotiations

Then to Mr Tally who takes 7: 6. for first Sheete of Record & 7. for every 8 sheets more, & if above 8 sheets from ye end of ye Term 2. for Judges Warr.t and 2. more if ye issue is an Adissue

Every Notice of Trial, or of executing a Writ of Inquiry, and all Countermands ought to be in Writing. *Notices to be in Writing.*

No Record of *Niſi Prius* ſhall be ſealed or paſſed at the *Niſi Prius* Office by the *Cuſtos Brevium* of this Court, or any Clerk of the Office, before the Iſſue or Part of it, be fairly entered on Record, and ſuch Entry and the Record of *Niſi Prius* be firſt ſigned by the Secondary of the Court. *Trin.* 1 *Ja.* 2. *Mich.* 5 *Annæ.* *Iſſue to be entered before Record of* Niſi prius *engroſs'd.*

As to Manner of entring Iſſues on Record, ſee after *Folio* 136. and for Judgment by Confeſſion 148

The *Niſi Prius* Record is to be engroſs'd on a Preſs of Parchment, ſtamped with a double Half-Crown Stamp, beginning, *Manner of engroſſing the Record of* Niſi prius.

Pleas before our Lord the King, at *Weſtminſter*, of the Term of St. *Michael* [ſame Term with the Iſſue] in the twelfth Year of the Reign of our Sovereign Lord *George* the *Second*, now King of *Great Britain*, and ſo forth. *Roll.* *Firſt* Placita.

Middleſex, Be it remembered, &c. [So enter the whole Iſſue as delivered; you enter no Continuances of the *Venire* as on the Plea Roll; then on a new Line write] *Manner of engroſſing Record of* Niſi prius.

Pleas before our Lord the King at *Weſtminſter*, of [the Term in which the Iſſue is to be tried] in the twelfth Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, and ſo forth. *Second* Placita.

Middleſex, The Jury between *A. B.* Plaintiff, by his Attorney, and *C. D.* Defendant, Jurata.

[You

[You must insert the Addition of the Plaintiff and Defendant, if any] of a Plea of Trespass upon the Case (as the Action is) is respited before our Lord the King at *Westminster*, to next after [the * next Return-Day after the Day of the Trial] unless the King's Right Trusty and Well-beloved Sir *William Lee*, Knight, His Majesty's Chief Justice, assigned to hold Pleas before the King himself, shall first come on [the Day of Trial] at *Westminster-hall* in the County of *Middlesex* aforesaid, according to the Form of the Statute in such Case made and provided, for Default of the Jurors; because none of them did appear: Therefore let the Sheriff have the Bodies of the said Jurors, to make the said Jury between the Parties aforesaid, of the Plea aforesaid accordingly. The same Day is given to the Parties aforesaid at the same Place.

* *The Return of the* Distringas.

or Comission-Day of Assizes and place where they are held. as on Friday the 21 day of ..... at ..... in the County of .... aforesaid

If the Record is to be tried in *London*, (then say,)

At the *Guild-hall* of the City of *London* aforesaid.

How if tried at the Assizes.

If at the Assizes, then add this to the *Jurata*.

And be it known, That the King's Writ in this Case on Record was delivered to the Deputy Sheriff of the said County, on [the last Day of the Term] in this same Term, before our Lord the King at *Westminster*, to be executed according to Law at his Peril.

a Third day of Term prexed. or eight days at the return of the writ of Distringas.

Of sealing the Record.

The Record being ready to be sealed, you carry it to the *Nisi Prius* Office to

be ſealed, where you pay 7 *s.* 6 *d.* for the firſt eight Sheets, and 7 *s.* for every eight Sheets after, and 6 *d.* to the Sealer.

By a Rule of Court made in *Trinity* Term 31 *Char.* 2. No Record of *Niſi Prius* for Trial of any Iſſue at the Aſſizes, ſhall be ſealed after the End of 3 Weeks after any iſſuable Term; but the Practice is at preſent altered; for by a Judge's Order, for which you pay the Officer 2 *s.* who will procure the Order at his Leiſure, you may have your Record ſealed at any Time before the Aſſizes.

Record for Aſſizes not to be ſealed after the End of the Term.

Practice altered.

The Form of the Venire.

GEORGE the Second, by the Grace of God King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, and ſo forth; To the Sheriff of *Middleſex* Greeting: We command you, that you cauſe to come before us at *Weſtminſter*, on next after [ſome Day before the Trial] twelve free and lawful Men of the Body of your County, each of whom has ten Pounds by the Year, of Lands, Tenements or Rents, at the leaſt, by whom the Truth of the Matter may be the better known, and who are in no wiſe of Kin either to *A. B.* the Plaintiff, or to *C. D.* to make a certian Jury of the Country between the Parties aforeſaid, of a Plea of Treſpaſs on the Caſe, [as the Action is] becauſe as well the ſaid *C. D.* as the ſaid *A. B.* between whom the

Venire.

Not Signed Seal 6-0-7 When 2-0

If Cauſe to be tryed at the Aſſizes, Or in a after Term [illegible] aſſ. iſſue Joined, Return of Bonnis & Ld Day of ye Term in w.ch Iſſue is joined

Contention thereupon is, have put themſelves upon that Jury; and have there then the Names of the Jurors and this Writ. Witneſs Sir *William Lee* Knight, at *Weſtminſter*, the 23d Day of *October* in the twelfth Year of our Reign. *Ventris.*

This Writ is not ſigned but only Sealed, for which you pay 7 *d.*

Of Trials by Proviſo.

If the Plaintiff ſhall not try his Iſſue by the Time he ought by the Courſe of the Court, the Defendant having given a Rule for the Plaintiff to enter his Iſſue (if not already entered), and the Iſſue being entered, may have a *Venire* by Proviſo, and try the Cauſe. In the *Venire* by Proviſo, after the Words, " have put themſelves upon that Jury", add, " Provided always, that if two Writs ſhall " thereupon come to you, you ſhall only exe- " cute and return one of them; and have, *&c.*"

But in *Lilly*'s Entries it is ſaid, theſe Words are not put in the *Venire*, but in the *Diſtringas* after *Plur. Defalt.*

Plaintiff on Rule muſt enter his Iſſue, or be Nonſuited.

If the Plaintiff enter not his Iſſue within the Time allowed by the Rule, he ſhall be Nonſuited, and the Defendant have his Coſts.

No Rule to enter Iſſue the ſame Term, unleſs Notice of Trial given.

If the Action be laid in *London* or *Middleſex*, the Defendant ought not to give a Rule for the Plaintiff to enter his Iſſue the ſame Term in which the Iſſue is joined, unleſs Notice of Trial hath been given; and in a Country Cauſe the Plaintiff is no ways bound to enter his Iſſue the ſame Term.

What Time the Plaintiff has to enter his Iſſue.

The Plaintiff muſt enter his Iſſue, if the Action is in *London* or *Middleſex*, and bring the

Rolls of Easter Term to be brot in before ye first day of Trinity Term and Rolls of Trinity Michas & Hill terms to be brot in before ye 8th day of ye term following ~ Pasch: 5. W. & M. & Michas 9. & Trin. 10 W. 3d. vid Post. fo. 145

* Entering ye issue, & ingrossing ye same on a roll wch must be carried into ye office of ye Filer

If Plte neglects to enter his issue by ye time above Deft may get a rule by mocon at ye side bar for Plte to enter his issue in 4 days if in L. or M. if in ye Country before ye Continuance Day of that term & in Default a Compress may be sign'd

If Deft ~~demurs~~ pleads an issuable plea & Plte neglects to reply, the Deft may get a rule to reply & enter ye issue as above, but in ye Comon Pleas they get 2 rules one to reply & ye other to enter the issue

and by ye Statute of 14th & 15th E. 2. c. 5. It is enacted That if after Issue Joined in any Court of Record the Plte neglects to bring such issue to be tryed accord. to ye Course of ye Court wherein ye same is joined ye Judge or Judges of such Court may shall on Motion in open Court (due notice of such motion having been given) give ye like Judgt. for ye Deft as in cases of Nonsuit, unless ye Court shall on just Cause reasonable Terms allow any further time for ye Tryal of such issue, And if ye Plte shall neglect to try such issue w. the time to be allowed, Then ye Court shall proceed to give such Judgt. as afore

Turn over.

All Affid.t to move for Judgt. (as in Case of Nonsuit) for not proceeding to Trial on 9th Stat. of 14 G.2. on the other Side

In the Kings Bench

Bet. &c.

A: B. of &c. Attorney (or agent) for the Deft. in this Cause maketh Oath that issue was joined in this Cause as of Term last & that the Pltf. did not proceed to Trial at the then next assizes &c. to be held for the County of &c. And that this Deft. filed on the ... day of &c. Giving notice is .... Attorney (or agent) for the Pltf. that this Honble Court will be moved to morrow or so soon after as Counsel can be heard for Judgt. as in Case of a Nonsuit pursuant to the late Act of Parliamt.

vid. fo: 188 for Affid.t of demanding Costs in order for an Attachmt. and fo: 240 for the Attachmt.

If Cause to be made a Remanet Q. if Jurats of Record &c returns of Writs &c. must be allowed & recorded.

the Record in the Office, within 4 Days after Notice of the Rule; if in the Country, before the Continuance-Day of that Term, or a *Non-Pros* may be ſigned and entered.

When a Trial by Proviſo may be had.

No Trial can be had by Proviſo in *London* or *Middleſex*, till Default made by the Plaintiff after the Iſſue is entered on Record, nor in Country Cauſes till the Plaintiff hath made Default in trying his Cauſe the next Aſſizes after the Iſſue is entered on Record; and in neither Caſe till a Rule for a Trial by Proviſo be entered.

Notice of ſuch Trial to be given.

Notice of Trial muſt be given by the Defendant to the Plaintiff in all Cauſes by Proviſo. *Eaſter* 1651.

Coſts for not going to Trial by Proviſo.

If the Defendant does not proceed to Trial by Proviſo, according to his Notice or Countermand in Time, the Plaintiff ſhall have his Coſts to be taxed.

Both Plaintiff and Defendant may carry down the Record.

Both Plaintiff and Defendant may carry down the Record at the ſame Time, but the Trial ſhall be by the Plaintiff's Record, if he enters it with the Marſhal; but if he refuſes or omits to enter it, the Defendant may proceed on his Record.

When the *Venire* is returned, you make out a *Diſtringas Juratores.*

Diſtringas. Middleſex.

George the Second, by the Grace of God King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, and ſo forth; To the Sheriff of *Middleſex*, Greeting: We command you, that you diſtrain the ſeveral Perſons named in the Panel annexed to this Writ, [annex a Panel with the ſame Names as returned in the Panel to the *Venire*

Not ſigned Seal - o - o - 7

3. Geo. 2.

nire facias with their Additions and Places of Abode] the Jury ſummoned in our Court before Us, between *A. B.* Plaintiff, and *C. D.* by all their Lands and Chatttels in your Bailiwick, ſo that neither they, nor any one by them, lay their Hands on them until you ſhall have further Command therein from Us, and that you anſwer to Us of the Iſſues thereof, ſo that you may have their Bodies before Us at *Weſtminſter*, on _____ next after _____ [the firſt Return-Day after the Day of Trial]* or before our Right Truſty and Well-beloved Sir *William Lee*, Knight, our Chief Juſtice, aſſigned to hold Pleas in our Court before Us, if he ſhall firſt come, on [the Day of the Trial] at *Weſtminſter-hall* in the County of *Middleſex* aforeſaid, according to the Form of the Statute in ſuch Caſe made and provided; to make a certain Jury between the ſaid Parties, of a Plea of [as the Action is] and to hear their Judgment of many Defaults; and have there then the Names of that Jury and this Writ. Witneſs Sir *William Lee* Knight, at *Weſtminſter*, the Day of [the Return of the *Venire*] in the Year of our Reign. *Ventris.*

London. If in *London* ſay,* or before our Right Truſty, *&c.* at the *Guildhall* of the City of *London* aforeſaid.

Aſſizes. If at the Aſſizes,* or before our Juſtices aſſigned to keep the Aſſizes in your County, if they ſhall firſt come on..... [the



[the Day of the Aſſizes] at [the Place] in your County, according to *&c.*

This Writ is only ſealed, for which you pay 7 *d.* and to the Sheriff if in *Middleſex*, for the Return 12 *s.*

If there be Occaſion, you make out a *Subpœna* for Witneſſes.

In London you only pay 4. 4. for ye Return both writs & Writings

GEORGE, by the Grace of God King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, and ſo forth; To *A. B. C. D. E. F. G. H.* [you may put in 4 Witneſſes] Greeting: We command you, that all and ſingular Buſineſſes and Excuſes being laid aſide, you and every one of you be in your proper Perſons before our Right Truſty and Well-beloved Sir *William Lee*, Knight, our Chief Juſtice aſſigned to hold Pleas in our Court before Us at *Weſtminſter-hall* in the County of *Middleſex*, on [the Day of the Trial] to teſtify all and ſingular what you, or either of you, know in a certain Action now pending undetermined in our Court before Us, between *J. K.* Plaintiff, and *L. M.* Defendant, of a Plea [as the Action is] and at that Day to be tried by a Jury of the County; and this you, or any of you are by no Means to omit, under the Penalty upon each of you, of one hundred Pounds. Witneſs Sir *William Lee*, Knight, at *Weſtminſter*, the Day of [a Day in Term before the Trial and Service] in the Year of our Reign. *Ventris.*

Subpœna for Witneſſes 4 Witneſſes in Each, make a note for ye office. Signed by Mr Hawley 0-1-8. Seal ---0-0-7

If at the Aſſizes, ſay, before our Juſtices aſſigned to take the Aſſizes in the County of

See ye other Side for ye proviſo

Middleſex, *to wit.* A Subpœna to teſtify for *A. B.* Plaintiff, againſt *C. D.* Defendant, of a Plea of Treſpaſs upon the Caſe.

A Precipe for the Office.

R. R. Attorney,
July 1738.

You pay for ſigning this Writ 1 *s.* 8 *d.* Sealing 7 *d.*

You muſt make out a Ticket for each Witneſs, to the Purpoſe following.

Subpœna Ticket.

Mr. *A. B.*

By Virtue of a Writ of Subpœna to you directed, and herewith ſhewn unto you, you are perſonally to be and appear before Sir *William Lee* Knight, Chief Juſtice of his Majeſty's Court of *King's Bench*, [according as before whom to be tried] on [the Day] by o'Clock in the noon of the ſame Day, at [the Place] to teſtify the Truth according to your Knowledge, in a certain Cauſe now depending, and then and there to be tried, between *C. D.* Plaintiff, and *E. T.* Defendant, in a Plea of on the Part of [Plaintiff or Defendant] And hereof you are not to fail, under the Penalty of 100 *l.* Dated the Day of *&c.*

R. R. Attorney for the Plaintiff.

If any of your Witneſſes ſhould be in Priſon, you may have a *Habeas Corpus ad Teſtificandum.*

George the Second, by the Grace of God King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, and ſo forth; To the Warden of our Priſon of the Fleet, Greeting: We command you that you have the Body of *E. F.* detained in our Priſon under your Cuſtody, as it is ſaid, by whatſoever Name he may be known in the ſame, under ſafe and ſecure Conduct, before our Right Truſty and Well-beloved Sir *William Lee* Knight, our Chief Juſtice, aſſigned to hold Pleas in our Court before Us, at *Weſtminſter-hall* in the County of *Middleſex*, on the Day of [the Day of the Trial] at o'Clock in the noon of the ſame Day, there to teſtify the Truth of his Knowledge in a certain Cauſe now depending in our Court before us, and then and there to be tried between *A. B.* Plaintiff, and *C. D.* Defendant, in a Plea of Treſpaſs on the Caſe, and then immediately after the ſaid *E. F.* ſhall have then and there given his Teſtimony before the ſaid Chief Juſtice, to return the ſaid *E. F.* to our ſaid Priſon, under ſafe and ſecure Conduct; and have there then this Writ. Witneſs, *&c.* *Ventris.* Habeas Corpus ad Teſtificandum.

If a Witneſs be going beyond Sea, ſo that he can't be poſſibly had at the Trial, he may by Rule of Court be examined before one of the Judges of the Court upon Interrogatories, but Notice of the Time of the *Of examining Witneſſes on Interrogatories before a Judge.*

Examination muſt be given to the Attorney on the other Side, who ſhall be at Liberty alſo to croſs-examine him, and the Depoſitions ſo taken may be read as Evidence at the Trial.

The Form of the Interrogatories.

Interrogatories for the Plaintiff. } Interrogatories to be adminiſtered to *E. F.* a Witneſs to be produced, ſworn and examined on the Part and Behalf of *A. B.* the Plaintiff againſt *C. D.* the Defendant, before Sir *Edmund Probyn*, Knight, one of his Majeſty's Juſtices of the Court of *King's Bench*, purſuant to a Rule of the ſaid Court, made on *Wedneſday* next after the Morrow of Saint *Martin*, in the eleventh Year of King *George* the Second.

Imprimis, Do you know the Parties Plaintiff and Defendant in the Title of theſe Interrogatories named, or either, and which of them, and how long have you ſo known them, either, and which of them, Declare.

Second *Item*, Was you in the Year, *&c.* ſo on the Matters neceſſary for him to prove.

Interrogatories for the Defendant. } Interrogatories to be administred on the Behalf of the Defendant to *E. F.* a Witneſs to be produced, (as before).

Theſe Interrogatories muſt be ſigned by Counſel; and after the Witneſs is examined by both Parties, the Judge's Clerk will deliver out Copies of the Depoſitions.

Cauſes to be entered in Judge's Book two Days before Sitting.

If your Cauſe is to be tried in *London* or *Middleſex* within the Term, it muſt be entered in the Judge's Book two Days before the Sitting, for which Notice is given; otherwiſe a *Ne Recipiatur* may be entered by the Defendant. *Hil.* 15 & 16 *Car.* 2.

At Sittings after Term no Ne Recipiatur *till after Proclamation.*

If the Cauſe is to be tried at the Sittings after Term, no *Ne Recipiatur* can be entered until after Proclamation made by the Order of the Chief Juſtice for the Attornies to bring in their Records; and then if the Record be not brought in, a *Ne Recipiatur* may be entered.

Plaintiff hindred of Trial by Ne Recipiatur *may try the Cauſe at next Sitting on Notice.*

If the Plaintiff be hindred from trying his Cauſe by the Defendant's entering a *Ne Recipiatur*, the Plaintiff may try it the next Sitting, if in *London* or *Middleſex*, upon giving Notice to the Defendant or his Attorney on the Day of the Sitting, when it ſhould have been tried, before the Riſing of the Court. *Mich.* 4 *Anne.*

In

As he may if not ready at the Day for which first Notice was given.

In like manner, if Notice of Trial be given for a Day certain in *London* or *Middlesex*, and the Plaintiff is not ready on that Day to proceed to Trial, the Cause may be tried the next Sitting, upon giving like Notice, as where a *Ne Recipiatur* is entered by Defendant.

If not tried at next Sitting, Notice to be given as at first, unless a Remanet.

But in either Case, if Cause is not tried at such next Sitting, Notice is to be given as at first, unless it be made a *Remanet*, when new Notice of Trial is never given, but the Defendant is bound to attend till the Cause is tried.

Two Days Notice of Countermand; Except.

Two Days Notice of a Countermand of Trial is sufficient, unless it be of a Trial to be had at the Assizes, and the Countermand is given to the Agent in Town; in which Case it ought to be four Days before the Commission-Day.

If Plaintiff don't countermand, Defendant may have his Costs.

If the Plaintiff does not proceed to Trial or countermand in Time, the Defendant, on Affidavit of Attendance and necessary Expences, shall have his Costs to be taxed by the Secondary.

Trial not stayed for not paying Costs for not going to Trial on former Notice.

If the Plaintiff gives Notice, but does not proceed to Trial, whereby Costs are taxed for the Defendant, and afterwards gives fresh Notice (perhaps with Design to put the Defendant to further Costs) yet the Court will not stay the Trial till the first Costs are paid (except in Ejectment) because the Defendant has a Remedy for them; and if the Plaintiff should not try the Cause pursuant to his second Notice,

the

In London & pds in Cst for Plts on a rond.l. ab.t 9:6:0

viz.t
Hall Hooper ——— 0–3–6
Tipstaff ——— 0–3–6
Barr & Door Keeper — 0–3–6
Jury ——— 0–8–6
} 1–3–0

Crier ——— 0–7–0
Clerk of Nisi prius ——— 0–10–0
Marshal ——— 0–18–4
} 2:18:4

To Marshal for making a Cause a remanet 5/-

Affid.t for Costs for Plts not proceeding to Tryal according to his notice

In y.e Kings Bench—

Bof. &c

C: D: of &c. y.e Deft in this Cause & J: Bof &c. his Attorny severally make oath as follows & first y.e s.d C. D. for himself Saith that pursuant to notice of Tryal given in this Cause for y.e last Assizes held at S. in y.e County he did this Dep.t & y.e said J. B. together with ... withesses w.ch this Dep.t believes were material & necessary in this Cause (to wit) Q: S. of &c. attended at y.e said Assizes; and that all y.e said Withesses took a journy from their respective Habitations to Q: aforesd being upwards of ... Miles and there Dep.t S.r & J. B. severally Say that y.e s.d Plt did not proceed to Tryal according to his said notice. Neither have they directly or indirectly rec.d any Countermand of y.e same and that these Dep.t & y.e s.d Withesses were on that Acc.t from home ... days and y.e s.d C. D. for himself Saith that he hath p.d ... for Horse hire & Expenses & other necessary Expenses on himself, his said Attorny, & y.e s.d Witnesses on their said Journys & at y.e said Assizes & Sessp. ....

Nor Countermand to be rec.d too late Say.

Neither he the s.d C. D. directly & indirectly rec.d any Countermand of y.e same till the .... day of .... &c.

Affid.t of Serving rule & demanding costs in order to obtain an Attachmt for want of paying such costs. —

In. K: B.

Bof. &c

C: D: of &c. y.e Deft in this Cause maketh oath that he the Dep.t on .... last did personally Serve A: B. y.e above Plt with a true Copy of y.e rule & taxation hereto annext & at y.e same time Shewed him the Origin.l rule & Taxation & demanded y.e Money mentioned in y.e said taxation, but y.e s.d A. B. refused (& neglected) to pay y.e same. If it be demanded by virtue of a Bill of Attorny Say; and Demanded y.e Money mentioned in y.e said taxation and Shewed him a Copy of Attorny from the Dep.t & by him duly executed authorizing this Dep.t to receive y.e same but y.e s.d A: B. refused & neglected to pay y.e same. vid fo. 240 for y.e Attachm.t

the Defendant will again have Coſts, and the like Remedy to obtain them.

Trials at Bar by Special Juries.

All Iſſues to be tried at the Bar are to be tried by a Special Jury ſtruck by the Secondary, which is in this Manner: The Sheriff attends the Secondary with the Book or Liſt of Freeholders, or Perſons qualified to ſerve on Juries; and the Secondary, in the Preſence of the Attornies of both Parties, names thereout forty-eight, of which twelve are ſtruck out on each Side, and the remaining twenty-four are to be returned by the Sheriff to try the Iſſue; and if either of the Parties ſhall neglect to attend the Secondary on ſtriking a Special Jury, the Secondary on Behalf of the abſent Party ſhall ſtrike out twelve Names. *Trin.* 8 *W.* 3.

The Manner of Striking a Special Jury.

At the Charge of the Party applying for a Special Jury.

The Secondary and Under-Sheriff had formerly each a Guinea a Side from Plaintiff and Defendant; but now by Act of 3 *Geo.* 2. the whole Charge lies on the Party applying for a Special Jury.

No Trial at Bar in an Iſſuable Term; Except.

A Trial at Bar is never allowed by the Court to be in an Iſſuable Term, unleſs the Crown is actually concerned in Intereſt.

Trial at Bar by Original muſt be on the Quarto Die poſt of the Venire.

Every Trial at Bar where the Proceedings are by Original, muſt be on the *Quarto Die poſt*, after the Return of the *Venire facias*, as if the *Venire* be returnable on the *Octave* of St. *Martin*, being the 18th of *November*, the Trial muſt be on the 21ſt of *November*.

The

Day of Trial at Bar to be appointed by the Court, but Plaintiff may countermand.

The Day of the Trial at Bar is always appointed by the Court; but yet the Plaintiff is at Liberty to countermand his Notice of Trial, and to prevent the Cauſe being tried on that Day, which if he does, it cannot afterwards be brought to Trial, unleſs ſome Day be appointed again by the Court.

vid. ſ. 128

When the Trial is over in *London* and *Middleſex*, the Aſſociate delivers you the Record immediately, and you ingroſs the *Poſtea* on the back of the Record. At the Aſſizes the Aſſociate keeps the Record till the next Term, and indorſes the *Poſtea*.

Poſtea for the Plaintiff on Non eſt Factum.

Afterwards, that is to ſay, on the Day and at the Place within contained, before Sir *William Lee*, Knight, the Chief Juſtice within written *T. H.* Gentleman, being aſſociated unto the ſaid Chief Juſtice, by Force of the Statute in that Caſe made and provided, the within named *A. B.* (the Plaintiff) came by his Attorney within contained, and the within named *C. D.* (the Defendant) although ſolemnly required, came not, but made Default. Therefore let the Jurors of the Jury within mentioned be taken againſt him by Default; and the Jurors of that Jury being ſummoned came, who to ſay the Truth, of the within Contents being Choſen, Tried and Sworn, ſay upon their Oaths, that the within mentioned Writing Obligatory is the Deed of the within named *C. D.* as the within written *A. B.* has within declared againſt him; and they aſſeſs the Damages of the within named *A. B.* by Occaſion of the Detaining

Defendant makes Default.

ing

If both parties stand a verdict and the verdict is for Deft. then & postea may be thus, Comes as well the within A: B. as the within written C. D. by their attorneys within contained And the Jurors of the Jury within mentioned being Summoned came who to say the Truth &c.

If the verdict be for Deft on a Non est factum say. That the within written writing obligatory for the within mentioned 100l. in the Declaration within written is not the Deed of the said C.D. as the within written A hath within complained agt him.

Postea

For Plt on Solvit ad diem pleaded — Say upon their Oaths that the within named P: S. [in his life time] after the within mentioned 10 day of Dec.r mentioned in the within written condition and before the day of exhibiting the within written Bill did not pay to the within named P: S. the within mentioned Sum of 100. and all Interest due for the same as the said P.s hath within for that purpose alledged in his plea And they assess the Damages of the said P: S. [by reason thereof or by occasion of detaining that Debt] over and above his Costs and Charges by him about his Suit in this behalf expended to — Twelve pence and for those Costs and Charges to — Forty Shillings.

For Plt in Detinue — Say that the aforesaid P: S. did detain from the aforesaid D: B. the within written &c. [the things detained] in manner & form as the said P: D. hath within complained ag.st him And the said Jury upon their Oaths further say that the within written &c. [goods things detained] are of the value of. . . . . pounds. And they assess the Damages of the said D: occasioned by detaining the aforesaid [things detained] to Twenty Shillings over & above his costs & charges by him abt. his Suit in this behalf expended and for those Costs & charges to 40s.

For a Plt ag.st a Deft for continuing & stopping up of p.ltes Lights — Being Chosen Tried & Sworn to declare the Truth of the within contents within named as to ye continuing & building in the within Declaration &c. & issue joined between ye within named parties It is Tried & Sworn by ye Jurors whose Names are Subscribed to their Oaths say That the said Joseph is Guilty in such manner & form as the said Simon within complains ag.st him: And by reason of continuing the said building last named by the said Jos. within named to be built & erected They assess the Damages of the said Simon over & above his Costs & charges by him about his Suit in that behalf expended to two pounds and for those Costs & charges to 20 Shillings. And as to the continuing of building within Specified in the said Deft.s first within named to be built & erected by the said Joseph if it shall happen Judgt. upon the within written Demurrer in Law thereon whereof the said parties have Submitted themselves to the Judgt. of Court Shall be given for the said Simon ag.st the said Joseph Then the said Jury To assess the Damages of the said Simon ag.st the said Joseph by reason of the continuation of the said building first above mentioned to be erected & built by the said Joseph besides his Damages and Costs aforesaid above put in Issue by him for the Continuance of the said first mentioned Edifice Erected & built as aforesaid to one penny.

ing that Debt, over and above his Costs and Charges by him about his Suit in this Behalf expended, to and for those Costs and Charges to forty Shillings.

For if Juramentum Cotth below entered on the Roll v. fo. 130

Say, That the within named *C. D.* doth Owe to the within named *A. B.* the 500 *l.* within mentioned, in Manner and Form as the said *A. B.* within complains against him, and assess, *&c.* (as the last.)

For Plaintiff on Nil Debet.

Say, that the within named *C. D.* did undertake in Manner and Form as the within named *A. B.* within complains against him, and they assess the Damages of the said *A. B.* by Occasion of the not performing the within mentioned Promises and Undertakings, over and above his Costs, *&c. ut supra.*

For the Plaintiff on Non Assumpsit.

Say upon their Oaths, that the within named *C. D.* is Guilty of the Premisses within laid to his Charge, in Manner and Form as the said *A. B.* complains against him, and they assess the Damages of the said *A. B.* by Occasion thereof, over and above, *&c.*

For Plaintiff in Trespass.

Say upon their Oaths, that the said *Catherine Franklin* has, and on the Day of Exhibiting the Bill of the within written, *R. J. to wit*, on the tenth Day of *April*, in the Year of the Reign of our Sovereign Lord the present King, had diverse Goods and Chattels, which were of the said *Richard Franklin* at the Time of his Death, in her Hands, to be administered, to the Value of the Debt within specified, whereby the said *J. R.* might have been satisfied of his said Debt, *to wit*, at *Marlborough* within

For Plaintiff on Issue of Plene Administravit.

within written, in the County aforeſaid; and they aſſeſs the Damages of the ſaid *J. R.* by Occaſion thereof, over and above his Coſts and Charges by him about his Suit in this Behalf expended, to and for theſe Coſts and Charges to 40*s.*

For Plaintiff in Ejectment.

Say upon their Oaths, that the ſaid *Charles Trubſhawe* is Guilty of the Treſpaſs and Ejectment within written, in Manner and Form as the ſaid *William* within complains thereof againſt him, and they aſſeſs the Damages of the ſaid *William* by Occaſion thereof, over and above, *&c.*

For Plaintiff on Non Aſſumpſit infra ſex Annos.

Say upon their Oaths, that the ſaid *Thomas* within ſix Years next before the within written Day of Exhibiting the within ſpecified Bill of the ſaid *Edward*, *to wit*, on the within written firſt Day of *April* in the Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, and ſo forth, in the within written Declaration ſpecified, undertook in Manner and Form as the ſaid *Edward* has within by Replying alledged, and they aſſeſs, *&c.*

Plaintiff Non-proſſed.

And the Jurors of that Jury being ſummoned came, who to ſay the Truth of the within Contents were choſen, tried and ſworn, and after Evidence being given to them of and upon the within contained, went from the Bar of this Court to diſcourſe of their Verdict of and upon the Premiſſes; and after the ſaid Jury had diſcourſed and agreed among themſelves, they came back to the ſaid Bar to give their Verdict in this Behalf; upon which the ſaid

Postea's

In Replevin on a non capit & tender for Deft.

Being Chosen tried & Sworn ~~upon their Oaths~~ to declare the Truth as to the taking & unjustly detaining of one Black Gelding parcel of the within written 3 Gelldings within Supposed to have been taken and unjustly detained by him the said F. in the first issue within mentioned joined between the said partys, Say upon their Oaths that the said John Did neither take nor detain the said Black Gelding as the said Thos. hath within alledged in pleading thereto; And as to the within mentioned Grey Gelding Specifyed in ye 2^d. issue joined between the said partys They further Say upon their Oaths that the s^d. Thomas did not tender payment to pay to the said John of the within mentioned Six pounds and thirteen Shillings mentioned in the within written Plea as the said Thos. hath alledged by way of Rejoinder thereto Therefore and so forth

In Replevin for Deft

——— mone? 20. day of Feby in ye within written &c. Year of the Reign of our said Sovereign Lord the King within Specifyed in the Declaration of the said Joseph and William Did not of his own proper injury ~~wrongfully~~ or without any such Cause alledged by the said Henry in his within written avowry in the within mentioned Place in which &c. take the Goods and Chattles within contained of the said Joseph and William within Specifyed and detain them until &c. as the said John hath within alledged in his Defence Therefore and so forth

In Assault and False imprisonment part for Plt. and part for Deft

not guilty

Being Chosen Tryed & Sworn to declare the Truth of the within contents; As to ye issue joined between ye s^d John and the s^d James declare upon their Oaths That the said James is not guilty of the premises within charged ag^t. him as the said James hath within alledged in making his Defence thereto: And as to the first issue joined between the said John and the said James (that is to Say) As to the coming with force & Arms & whatsoever else that is ag^t. ye peace of our Sovereign Lord the King that now is and also as to the whole Trespass within mone? except ye assaulting Beating ill treating taking and imprisoning & in prison detaining and keeping of the said John by ye Space of 8. Hours within mone? part of ye within mone? Whereof the said Jury upon their Oaths further declare that the said James

Guilty.

is Guilty thereof in such manner & form as ye s^d. John within — complains ag^t. him; And As to the Second issue within mone? joined Between ye s^d. Jno. & James (that is to Say) as to ye assaulting beating — ill treating taking & imprisoning and in prison detaining & keeping of ye s^d. Jno. by ye Space of 8. Hours the said Jury upon their Oaths further declare that ye s^d. James ye day & Year Specifyed in ye Decl^n. within written of his own proper injury without any such Cause as by him ye said James is within protended in his Plea in the Parish of P. in ye within mone? County made an assault upon ye s^d. Jno. & Him the said John took — imprisoned & in prison there detained and kept ye s^d. Jno. in such manner & form as ye s^d. Jno. doth within complain ag^t. him and they assess the Damages of ye s^d. Jno. by occasion thereof over & above his costs & charges by him about his Suit in this behalf expended to 40. and for their Costs & Charges to 2d. Shillings. /

Postea

for Deft in Ejectment — Say upon their Oaths that the Defd. E. F. is not Guilty of the Trespass and Ejectment within written as the said C. D. hath in pleading within alledged Therefore and So forth

The words of course to be entred on the Roll are these. "Therefore it is considered that the said C. D. take nothing by his Bill &c. but that he be amerced for his false Suit and that the said E. F. may go thence without a day &c

Judgt. pt to be entred on the Roll after Verdict

? if this not to be added

And it is further considered that the [Deft] do recover against the [Pltf] for his Costs & charges by him about his defending his said Suit in Defence in this behalf sustained to be taxed by the Court of the said Lord the King now here by his assent allowed according to the form of the Statute in this case lately made & provided and that the said Deft may have Execution thereof &c.

for

Thomas Meſſiter being ſolemnly required came not, nor did he further proſecute his ſaid Bill againſt the ſaid *Thomas*. Therefore, and ſo forth.

For the Defendant's Damages, according to the Form of the Statute, to 5 *l.* 10 *s.*

Were choſe, tried and ſworn, upon which for certain Cauſes moving as well the ſaid Chief Juſtice as the Parties *E. F.* one of the Jurors of the ſaid Jury was withdrawn from the Panel, and the Reſidue of the Jurors of that Jury were entirely diſcharged from giving any Verdict of and upon the within written Premiſſes, *&c.* *Juror withdrawn.*

Say upon their Oaths, that the ſaid *Thomas King* and *Obadiah Reynolds* are in no wiſe Guilty of the Treſpaſs in the Declaration within ſpecified, as the ſaid *Thomas* and *Obadiah* have by their Pleading within alledged. Therefore, *&c.* *For the Defendants on Not Guilty in Treſpaſs.*

Say upon their Oaths, that the ſaid *Edward* did not at any Time within ſix Years next before the Suing out the ſaid Writ break and enter the Houſe of the ſaid *Thomas*, nor take and carry away the Goods and Chattels, and Money of the ſaid *Thomas* within contained, as the ſaid *Thomas* has within by Replying alledged, *&c.* *For the Defendant in Treſpaſs on the Statute of Limitations pleaded.*

Say upon their Oaths, that the ſaid *Edward*, at the Time of Exhibiting the Bill of the ſaid *Robert* within ſpecified, had fully adminiſtered all the Goods and Chattels which were of the ſaid *Thomas* at the Time of his Death, in his Hands to be adminiſtred; and that he the ſaid *Edward* has *For the Defendant on* Plene Adminiſtravit.

has not, nor on the Day of Exhibiting the within ſpecified Bill, or at any Time afterwards, had any Goods or Chattels which were of the ſaid *Thomas* at the Time of his Death, in his Hands to be adminiſtered, wherewith he was able to pay the Debt within ſpecified, or any Part thereof, to the ſaid *Robert*, as he in Bar of the ſaid *Robert* has within by Pleading alledged.

For Defendant Executor, that his Teſtator Non Aſſumpſit.

Say upon their Oaths, that the within named *William Bulkly* the Teſtator, did not in his Life-Time undertake in Manner and Form as the ſaid *William* has within declared.

Poſtea to be mark'd before Coſts taxed.

Every Attorney who receives any *Poſtea* from the Aſſociate ought to get it mark'd by the Clerk of the *Poſteas* within two Days after he receives it. *Trin.* 2 *Jac.* 1. But now it is thought ſufficient if the *Poſtea* is mark'd at any Time before the Coſts are taxed; you pay the Clerk of the *Poſteas* 4 *d.* then you give a Rule on the *Poſtea* with the Clerk of the Rules, for which you pay 1 *s.* 4 *d.* *

Four Days to move in Arreſt of Judgment, or for a new Trial.

No Judgment can be entered upon a Writ of *Niſi Prius*, or Inquiry given either for Plaintiff or Defendant, until the Expiration of four Days, exclusive of the Entry of a Rule for Judgment, during which four Days the Party, againſt whom the Verdict paſſed, may move the Court in Arreſt of Judgment, or for a new Trial.

v. fo. 132 when on a Writ of Inquiry

d Sunday not reckoned. vid fo. 129.

Sunday,

* Make a paper for ye C^k of ye Rules thus (wch must be left with him viz

Eaſter 21. Geo. 2^d.

K: B. ag^t. C. D.

Rule for final Judgment

V: S. attorney for Plff

27. April 1748

If ye Tryal be in London or Middx & associate delivers you ye Record immediately with ye Distringas, and you ingross ye Postea on ye Back of ye record.
But at ye assizes & associate is to ingrosse ye Postea (not ye attorney, in wch case ye associate keeps ye Record till ye next Term, in wch time he will endorse ye Postea on ye record.

When ye Postea is ingrossd carry it to ye Clerk of ye Postea's to be markt for wch he takes 4 pence. Then make out a paper of Rules for final Judgmt (called it wth ye Clerk of ye Rules (they have it ready) (He will give a Rule for final Judgt in his presence) and this is ye time for Deft to move in arrest of Judgmt or for a new Tryal.

N3. no need of such rule for remanet

after ye rule is out Stamp ye record with a Double ½ Crown Stamp and then ye Secondary or Master will tax your Costs de Incremento after which ye Judgmt may be entered on the Roll in doing whereof Care must be taken that no Error be Committed

N3. you pay ye Master 0-__-__ for taxing Costs on a Postea.

If this Cause be tryed within ye Term the Rule given on ye Postea to enter Judgmt may be given ye day after, if ye Postea be indorsed or marked but if ye Tryal be at ye Sittings after Term or at ye assizes, The Rule cannot be given till ye first Day of ye next Term vid fo: 129.

Therefore if Tryal be on ye last day but one of a Term the rule for Judgmt (Postea being indorsed (& marked) may be given ye last day of ye Term or within 4 days after ye Term (during wch 4 days it is ye practice to enter there rules as of ye last day of ye Term) and at ye Expiration of such 4 days Remitter after which such rule for Judgmt may be entered signed
and if Tryal be at ye Sittings after Term or at ye assizes ye Rule can't be given till ye 1 day of ye next Term and therefore in this Case Deft has ye first days of such next Term to move in arrest of Judgmt.

Sunday or any other day on wch ye Court does not Sit, is not to be accounted one of the 4 days, nor ye day on wch ye rule is given

N2. it is held that if Tryal be at any of ye Sittings within Term and therefore so near ye end of it that there is but one day of ye Term to come in wch Deft might move in arrest of Judgmt, yet he may take out a Distringas that ye rule be not out till ye Term be expired (admitting Deft has not 4 days in Term to move and Plt need not stay till ye next Term. Sed Contra if ye Tryal be at Nottings after Term and ye assizes for then ye rule can be given till ye 1. day of next Term

Arrest of Judgm.t

Causes for Arrest of Judgm.t are (viz.) That Defft or his Attorney had not regular Notice of Tryal — That ye Record differs from ye Bill pleaded — That there is a — Material Defect in Pleading — that plff or Defft hooked ye Jury &c. That verdict was against Evidence &c.

Affid.t of Increase of Costs after Tryal

Between &c.

In the King's Bench

C. D. of &c. ye Defft in this Cause & Jn. B. of &c. his Attorney Severally make Oath &c. (and do on the Bible as in Affid.t in fo: 122 to mark ✝) and these Depts say that this Cause was tryed on ..... ye ..... day of ..... between ye ..... & ..... of ye Clerk in ye ..... room, and that these Depts & ye said Witnesses were on that acct from Home ..... days and that this Depts hath pd ..... for Horseline & other necessary expenses of himself, his Sd Attorney, & ye said Witnesses on their Sd Journys at ye said Assizes ye Sum of ..... and this Depts Jn. B. for himself saith yt he pd ..... [Pass in Court or to Counsell &c. as ye Case is]

Affid.ts to move for a New Tryal or in Arrest of Judgt.—

That 1st. That no Notice of Tryal was Given /

C: D. of &c. & Dept in this Cause maketh oath that he this Dept. had no Notice of Tryal in this Cause at ye now assizes holden for ye County of S. but that ye same was tryed without any notice given thereof to him this Dept.

2d. That ye Record differs from ye Deed Pleaded. /

— That ye Record whereon this Cause was tryed at ye last assizes held for &c. differs from ye Deed pleaded on ye said Tryal; for in ye record of ye I.st Cause ye Deed is mentiond to bear date &c. and to be made between &c. and ye Deed is dated on &c. and made between &c.

3d. That there was a Defect in Pleading

— G: F. attorny for ye Dept maketh oath that ye Counsel for ye Plte in this Cause pleaded &c. when they Shou'd have pleaded &c. or before the Dept pleaded his plea of not Guilty contrary to ye Course of practice in this Court

4th. That Plte Treated ye Jury —

—. G: F: &c. — That G: H. attorny for ye Plte on &c. last before the Tryal of this Cause came on treated with &c. the Jury impannelled for Trying this Cause particularly J: K. of M. &c. at &c.

Sunday, or any other Day on which the Court doth not ſit, is not accounted one of the four Days, unleſs the Rule be entered on the laſt Day of the Term, or within four Days after the Term, (during which four Days it is the Practice to enter theſe Rules as of the laſt Day of the Term); and at the Expiration of four Days excluſive after Entring ſuch Rule, Judgment may be entered.

Sunday, or any Day on which the Court does not ſit is not accounted one of the 4 Days, Except.

This Rule ought not to be entered before the Day in Bank, and is not neceſſary if the Plaintiff be Nonſuited, but Judgment in that Caſe may be entered immediately after the Day in Bank.

Rule not to be given before Day in Bank or Nonſuit.

If the Party moves for new Trial, and it be denied, he may afterwards move in Arreſt of Judgment; but if he moves in Arreſt of Judgment and fails, he cannot afterwards move for a new Trial.

New Trial cannot be moved for after Motion in Arreſt of Judgment.

After the Rule for Judgment is out, you Stamp your Record with a double Half-Crown Stamp, and then the Secondary will Tax your Coſts *De Incremento*. Then is your Judgment to be entered of Record, and ſuch Execution as may be proper ſued out, which ſee hereafter.

Of ſigning final Judgment.

How to do this in Writs of Inquiry vid. ſo. 192.

If the Iſſue joined be not an Iſſue in Fact, but an Iſſue in Law, as a Demurrer, then as ſoon as the Paper Book is returned, you muſt enter the Proceedings on Record, which being brought into Court, you get a Counſel to move for a *Concilium*, and then enter the Cauſe with the Clerk of the Papers, and deliver the Paper Books to the

Method of going to Argument on Demurrer.

Judges in Manner before directed; and the Court upon the Argument will give Judgment.

Of Judgments by Default, &c.

Judgments by Default in Debt.

If the Defendant does not plead by the Time limited, or Judgment is given againſt him on Demurrer, if in Debt, the Judgment is final, to be ſigned on a double Half-Crown Stamp Sheet of Paper, on which an *Incipitur* of your Declaration is to be wrote, and a Rule given for Judgment, as before directed on a *Poſtea*. If the Action is in Caſe, Treſpaſs, *&c.* the Judgment is only Interlocutory, 'till Inquiry executed, and ſigned on a double Penny Stamp Sheet of Paper.

as for 3d Trial. vid: fo. 110

You give the like Notice in all Caſes of Executing a Writ of Inquiry, as of a Trial.

Writ of Inquiry.

GEORGE the Second, by the Grace of God, King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, and ſo forth, To the Sheriff of *Middleſex*, Greeting: Whereas *A. B.* lately in our Court, before us at *Weſtminſter* by Bill, without our Writ, impleaded *C. D.* being in the Cuſtody of the Marſhal of our *Marſhalſea*, before us; for that whereas the ſaid *C. D.* on [ſet forth the whole Declaration (only inſtead of ſaying in the Year of the Reign of our, *&c.* ſay in the Year of our Reign) to] To the Damage of the ſaid *A.*

Interlocutory Judgm:

If y^d Action is in Case Trespass &c. & Defft Dont plead by y^d time limitted &c you may Sign Interlocutory Judgm:^t as follows Write y^d Term in w:^ch you Sign Judgm:^t on a double peny then make an incipitter of 2 or 3 lines of Decl:^n & also make an incipitter on a role w:^ch you get of M:^r Gibbons in ye temple Cloister & M:^r Hawly will give you a number for it, and M:^r Cantrow will Sign it Judgm:^t who takes 3:6^d if ye Decl:^n is not very long Then Give Notice of executing writ of Inquiry &c.

If in Debt & for want of Plea or Rep:^r it must be on double ½ crown & it is final

Notice of executing a Writ of Inquiry

In the Kings Bench T: B.^t
ag:^t
T: G

M:^d .....

Take Notice a Writ of Inquiry of Damages in this Cause will be executed on Tuesday ye day of this instant ..... at Guildhall within the City of London [if in Midd:^x] at ye Court House at Hicks's [If in Term time, but if in vacation, or in ye after noon in Term] at ye 3 Tuns in Brook street near Holborne in ye County of Midd:^x between ye Hours of ... & ... of ye Clock in the .... noon of ye same day Yours &c. G. L. Attorney for ye Pltf dat:^d &c:^r

Before writ of Inquiry be Carried to ye Sheriff Indorse on it ye time & place where you gave notice it shd be executed, Carry it to Sheriff 2 days at least before it be executed

after ye writ of Inquiry is executed you give a 4 day rule
exclusive for final Judgm^t. with the Clerk of the rules wch is
ye time allowed to move in arrest of Judgm^t. wch rule
being out, Stamp ye Inquisition, tax Costs thereon and
sign final Judgm^t.

B. of Pounds, as he ſaith, and ſuch Proceedings were thereupon had in our ſaid Court before us. That the ſaid *A. B.* ought to recover his Damages by Means of the Premiſſes against the ſaid *C. D.* but becauſe it is unknown to our ſaid Court before us, what Damages the ſaid *A. B.* hath ſuſtained by the Means aforeſaid, We therefore Command you, that by the Oaths of twelve good and lawful Men of your Bailiwick you diligently inquire what Damages the ſaid *A. B.* hath ſuſtained, as well by Means of the Premiſſes, as for his Coſts and Charges by him about his Suit in this Behalf expended, and make appear to us at *Weſtminſter* on next after the Inquiſition, which you ſhall thereupon make, under your Seal, and the Seals of them by whoſe Oath you ſhall take that Inquiſition; and have there then this Writ. Witneſs Sir *William Lee*, Knight, at *Weſtminſter*, the Day of in the Year of our Reign.

J— Ventris.

This Writ is not ſigned, only ſealed, for which you pay 7 *d.*

If executed in *Middleſex*, you pay the Sheriff 1 *l.* 10 *s.* 4 *d.* which is divided thus, to the Sheriff 10 *s.* Under-Sheriff 3 *s.* 4 *d.* Bailiff for ſummoning the Jury 4 *s.* for the Room 1 *s.* to the Jurors 1 *s.* each, 12 *s.* beſides 4 *d.* for each Witneſs Sworn.

You may have a *Subpœna*, if Occaſion be, for your Witneſſes.

Subpœna on Inquiry.

GEORGE the Second, by the Grace of God, King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, and ſo forth, To *E. F. G. H. &c.* Greeting: We Command you, that all and ſingular Buſineſſes and Excuſes being laid aſide, you, and every one of you, be in your proper Perſons before our Sheriff of *Middleſex*, on the Day of at o'Clock in the noon of the ſame Day, at the Court-Houſe at *Weſtminſter* [if in Vacation, or in an Afternoon in Term-Time (at the *Three Tuns* in *Brookſtreet*, near *Holborn*)] in the County of *Middleſex*, to teſtify the Truth in a certain Matter of Controverſy pending in our Court, before us at *Weſtminſter*, between *A. B.* Plaintiff, and *C. D.* Defendant, on a Plea of [as the Action is] And this you, or any of you, are by no means to omit, under the Penalty upon each of you of 100 *l.* Witneſs, *&c.*

You Sign and Seal this Writ, and make out a Note for the Office, and Tickets for the Witneſſes, as before directed. *fol. 116.*

When the Writ of Inquiry is executed, and returned by the Sheriff, you give a Rule for Judgment as on a *Poſtea*, and when that is out you get the Inquiſition ſtamped with a double Half-Crown Stamp, Tax you Coſts *de Incremento* thereon, and enter up final Judgment; of which ſee hereafter. *fo. 145.*

If

☞ The manner of giving a Rule for final Judgmt on a writ of Inquiry is Make a note for ye Rule in ye following form, to ye Clerk wch writes ye Rules & pay him 0–1–4. and he will give ye Rule in his Postea a paper of Rules

A Note for Rule for final Judgmt on an Inquiry

Easter Term in the 20 year of the Reign of King George the Second A: B. agt. C. D.

Rule for final Judgment on a writ of Inquiry

5th April 1747 S— attorney for Pltf

N.B. if ye Deft Attorney has a mind to be present at ye taxing of Costs he must get a rule from ye Side Bar, ye Pltfs attorney may give him notice of ye time of taxing, & if a Copy thereof be lodged on Pltfs attorney he is obliged to give Deft Attorney notice of ye time of taxing ye Costs, otherwise not. The form of wch Rule is as follows

Rule to be present at taxing Costs. — 13— 9^br

Saturday next after ye morrow of ye Holy Trinity in 22 yr of King

It is ordered that ye Attorney for ye Pltf shall give notice to ye Deft Attorney for ye Deft of ye time of taxing costs in ye Action & parties that he may be present if he thinks fit

By the Court

ye Rule.

Judgem.t

Judgem.ts to have relation to ꝑ to be in force from ye first returne of ye Term in wch it is signed. Hutt. Rep.ts 95
If Signed in Vacation to have relation &c. to ye 1st. returne of ye preceding Term

If a Judgment be ſtrictly regular, yet if the Plaintiff has not loſt a Trial, the Court has in many Inſtances, upon Payment of Coſts, pleading to Iſſue, and accepting Notice of Trial within the Term ſet aſide ſuch Judgment, that the Merits of the Cauſe might be tried.

When Judgment, though regular, may be ſet aſide.

If there be Irregularity in the Proceſs, or any of the Proceedings before or after Judgment, it behoves the Attorney for the Defendant, if he has a Mind to take Advantage of it, to apply to the Court as ſoon as the Irregularity happens; for in many Caſes where the Defendant after an Irregularity has lain ſtill, and let the Plaintiff proceed, and be at great Expence, and then has come and complained of it, the Court has refuſed to aſſiſt him, as ſuch Practice proceeds from a Deſign to put the Plaintiff to unneceſſary Charge, or to delay the Suit, and ought to be diſcouraged.

Advantage of Irregularities to be taken as ſoon as happens

Many Times the Defendant when firſt arreſted will on Time given him for Payment of the Debt, or on other Terms give a Warrant of Attorney for Confeſſing Judgment. But *Note*; No Warrant of Attorney for confeſſing a Judgment executed by any Perſon in Cuſtody of any Sheriff or other Officer, ſhall be of any Force, unleſs ſome Attorney for and on Behalf of ſuch Perſon in Cuſtody, and expreſly named by him, be preſent to inform him of the Nature of ſuch Warrant, which Attorney ſhall ſubſcribe his Name, as a Witneſs to the due Execution thereof. *Eaſter* 15 *Car.* 2.

Warrants of Attorney to confeſs Judgment by a Perſon in Cuſtody not binding, unleſs his Attorney preſent.

Judgment to be entred of Term mentioned in Warrant of Attorney.

Where a Warrant of Attorney is given for confeſſing a Judgment to be entered of a certain Term therein mentioned, Judgment can be entered only of that Term.

How if no Term mentioned, or a particular Term, or any Term ſubſequent thereto.

If the Warrant be to confeſs Judgment generally, without expreſſing any particular Term, or does expreſs that it be entred of a particular Term, or any Term ſubſequent to it, Judgment may be entered of any ſubſequent Term; but if not entered within the firſt four Terms next after the Date of the Warrant, the Court muſt be moved for Leave to enter the Judgment upon Affidavit made of the due Execution of the Warrant of Attorney, and that both Parties are living, and the Debt or Part thereof is unſatisfied; if entered otherwiſe, the Court on Motion will ſet it a-ſide.

vid. at the side for a form of the affidt

Judgment by Cognovit Actionem & Dampna, *to ſave Charges of Inquiry.*

The Defendant often after Declaration will, on a Stay of Execution for a Time, give Judgment by *Cognovit Actionem*, and in Caſe or Treſpaſs, *&c.* to ſave a Writ of Inquiry, admit Damages by under-writing the Declaration thus: 'I acknowledge this 'Action, and admit that the Plaintiff *A. B.* 'has ſuſtained Damages to 50 *l.*' [according as the Sum is.] But in this Caſe, I think the Defendant's Attorney ſhould be preſent, and a Witneſs.

Of

on every Judgmt. acknowledged
be filed, to warrant the Judgm
vid. fo

There need no Origin.ª to warrant a Judgm.t by Confession if there is a Release of Errors executed with y.e Warr.t of attorny

a Release of Errors dont oneredss y.e allowance of Cost in B.R. otherwise in y.e Comon Pleas there being a fine attending it in that Court

An affid.t to obtain Leave to enter up a Judgm.t on an old Warr.t of attorny.

In y.e K: B

Botwrdsn &c.

W: S. of &c. & T: N. of &c. Severally make oath & first y.e s.d W: S. for himself Saith that the s.d Sum of 68. part of y.e Debt secured to be paid unto him this Dep.t in & by one Bond or Obligacon in y.e penal Sum of 100 bearing date &c, entered into by y.e said Dep.t T: S. unto him this Dep.t & for w.ch said Debt Dep.t hath a Warr.t of attorny executed by y.e said Dep.t bearing even date with y.e said Bond to confess Judgment thereon in this present Trin.y Term is still due & owing unto him this Dep.t And this Dep.t further Saith y.t y.e s.d T. S. is now living as this Dep.t verily believes & this Dep.t having been & dis coursed with y.e said Dep.t on y.e 1. day of this instant May. And y.e s.d T: N. for himself Saith that he was present & did see y.e s.d Dep.t T. S. duly execute y.e s.d Bond & Warr.t of attorny above mentioned And further Saith y.t y.e name of T: N. Subscribed as a witness to y.e same Bond & Warr.t of attorny abs.t is of this Dep.t own proper hand writing

ledged by Warr.t of Attorny, Bail is to
dgment &c. For 1. w. & m.
rd. fo: 50

Sed Q. Vide Pach.

Of Entring Judgments.

EVERY Judgment in Debt, Caſe, Covenant, Treſpaſs, Trover, and every other Action, is to be entered fairly on the Roll, or an *Incipitur* thereof, before ſuch Judgment ſhall be ſigned by the Secondary, or any Judge of this Court, and the Names of the Plaintiff and Defendant, with the County where the Action is laid, and the Nature of the Action with the Attorney's Name are to be entered on the Book kept by the Secondary for that Purpoſe. *Mich.* 5 *Annæ.*

Judgments or Incipiturs *thereof to be entered on the Roll before ſigned.*

All Iſſues and Judgments ought to be entered on the Rolls in a full fair Hand, with a large Margin of an Inch at leaſt, and a convenient Diſtance at the top [of about nine Inches the Breadth of the Roll] for binding up the ſame, and at the bottom that the Writing be not rubbed out. *Hil.* 1657.

How Judgments ought to be entered on the Roll.

Warrants of Attorney for Plaintiff and Defendant ought to be entered on every Judgment-Roll before the Entry of the Judgment, otherwiſe ſuch Roll not to be filed. *Eaſter* 4 *Jac.* 2.

Warrants of Attorney to be entered.

Entry of an Issue

You begin your Entry thus:

As yet of Michaelmas *Term* [*as the Term is*] *Witness Sir* William Lee, Knight.

Warrant of Attorney for the Plaintiff.

London. *A. B.* puts in his Place *E. F.* his Attorney, against *C. D.* on a Plea of Trespass on the Case [according as the Action is, and if the Defendant be described by an *Alias Dict'* in the Declaration, or he or the Plaintiff be an Executor or Administrator, they must be so mentioned in the Warrant.]

Warrant of Attorney for the Defendant.

London. *C. D.* puts in his Place *G. H.* his Attorney, at the Suit of *A. B.* in the Plea aforesaid.

London. Be it remembered, That [here enter the *Memorandum* and Declaration, according to the Directions before given *fol.* 108, 109. from mark ⅄

On a Verdict in London.

[If it be a Judgment on a Verdict, you enter to the End of the Issue *viz.* The same Day is given to the Parties aforesaid, at the same Place, [then go on thus] Afterwards the Process being continued between the Parties aforesaid, of the Plea aforesaid, by the Jury being respited between them before our Lord the King at *Westminster*, until

next

v: 148. for Entry of a Judgmt by Default or Confession

133 ing 9 inches from ye Top

To Enter an Issue

As yet of Trinity Term withers S^r Wm Lee Knight -

Middlesex ~~plaintiff~~ F. ff. puts in his Place J. S. his Attorney ag^t A. P. in a plea of Trespass on the Case

Middlesex ~~plaintiff~~ A. P. puts in his place J. S. his Attorney at ye Suit of F. ff. in the plea aft^d

X This when Issue & Nor are of 2 terms & there is an Imparl if no Imparl. Thus X in next after ..... in this Same Term &c. v: 109.

Middlesex Be it Remembred X That in Easter Term last past before our Lord the King at Westminster came F. ff. by J. S. his Attorney & brought into ye Court of our S^d Lord ye King then there his certain Bill ag^t A. P. being in ye Custody of ye Marsh^l &c. [and so on verbatim thro' ye rest of ye Issue delivered

Roll 883. Anthony and Biggs

To Enter and Dogget Issue Roll.

After you have got a N^o for your Roll from Mr Hawley till ye 3 in day of M^d Tullys [& afterwards] put it to ye Bottom of ye Roll as above, Then make a Docket Paper thus.

The Entry of J. S. Gentleman one of the Attorneys of the Court of Kings Bench of the Term of the Holy Trinity in the 15 & 16 y^r of King George the Second

Middlesex (to wit) The Entry of an Issue in an Action of Trespass on the Case Between J. ff. Pltf & A. P. Deft. - - - - - - - - } Roll 883

Sav^l time Rolls to be carried in v. 148.

Carry this Docket Paper Docket to Mr Leathrow who keeps it & enters it & stamps ye Roll & the Copy of your Issue and takes 3 pence a Sh^t for ye Issue & 1. for ye Docket besides all^s 3. for post Terminums if any, then carry ye Roll to Mr Tullys Clerks who will file it, who is to have 4^d for each warr^t of Attorny out of wch he allows 4^d for each Roll

How to file an Issue Roll after the time elapsed

Got a N^o Roll from Mr Tullys Clerk of ye Term in wch Issue is joined for wch he takes 4^s 8^d. vizt 4^s 4^d. for ye N^o & Post Mark and 4. for filing it when you bring it to him for that Purpose. [illegible] Attorny & Issue on ye Roll as above & Carry it & a Docket paper thereof to Mr Leathrow, who keeps ye Docket paper, Stamps & signs Roll & Enters ye Copy of ye Issue & returns them to you, and takes 3 pence for every Sh^t of Issue & 1^s for ye Docket & 3. for ye post Terminums &c. Then Carry ye Roll to the Tullys Clerk & he will file it for wch he takes 4 pence for every warrant of Attorny & allows 4 pence for every Roll wherein Issue is written.

next after [the Return of the *Diſtringas*] then next following, unleſs* the King's Right Truſty and Well-beloved Sir *William Lee*, Knight, his Chief Juſtice aſſigned to hold Pleas before the King himſelf, ſhall firſt come, on the Day of at † the *Guildhall* of the City of *London*, according to the Form of the Statute in ſuch Caſe made and provided, for Default of the Jurors, becauſe none of them did appear; at which Day before Lord the King at *Weſtminſter*, the aforeſaid *A. B.* comes by the ſaid *E. F.* his Attorney aforeſaid; and ‖ the ſaid Chief Juſtice, before whom the ſaid Iſſue was tried, ſent hither § his Record had in theſe Words, *Afterwards*, That is to ſay, on the Day, and at the Place within contained before ** Sir *William Lee*, Knight, the Chief Juſtice within written, Gentleman, being aſſociated unto the ſaid Chief Juſtice, by Force of the Statute in that Caſe made and provided, came the within named *A. B.* by his Attorney within contained, and the within named *C. D.* although ſolemnly required, came not, but made Default; therefore let the Jurors of the Jury within

* *If at the Aſſizes, ſay the Juſtices of our Lord the King, aſſigned to keep the Aſſizes in the County aforeſaid, ſhall firſt come.*

† *The Place they are held at.*

‖ *The ſaid Juſtices of our ſaid Lord the King.*

§ *their* The Poſtea.

** T. P. *Knt. one of the Barons of our Lord the King's* Exchequer, *and Sir* E. P. *Knt. one of the Juſtices of our Lord the King, aſſigned to hold Pleas before the King himſelf, Juſtices of our Lord the King*

aſſigned to keep the Aſſizes in the ſaid County of —— *by Force of the Statute, and ſo forth, came the within named.*

in mentioned be taken againſt him by Default; and the Jurors of that Jury having been ſummoned come, *to wit*, *G. H. J. K. L. M. &c.* who being Choſen, Tried and Sworn to declare the Truth of the Iſſue within contained, upon their Oaths ſay, That the within named *C. D.* did undertake in Manner and Form as the within named *A. B.* within complains againſt him, and aſſeſs the Damages of the ſaid *A. B.* by Occaſion of the not performing the Promiſes and Undertakings within mentioned, over and above his Coſts and Charges by him about his Suit in this Behalf expended, to and for thoſe Coſts and Charges, to 40*l.* It is Therefore conſidered, That the ſaid *A. B.* recover againſt the ſaid *C. D.* his ſaid Damages by the ſaid Jury in Form aforeſaid aſſeſſed, and alſo for his ſaid Coſts and Charges, by the Court of our ſaid Lord the King, now here, adjudged of Increaſe to the ſaid *A. B.* by his Aſſent, which Damages in the whole amount to.... and the ſaid In Mercy &c.

Verdict for the Plaintiff on Non Aſſumpſit.

Judgment ſigned the — Day of — 1738.

Coſts de Incremento. *vide infra 306. 495.*

The not Entring the Words *Miſericordia* or *Capiatur*, or putting the one for the other, is helped by Statute 16 & 17 *Car.* 2. *c.* 8.

How to enter Continuances.

If the Cauſe be not tried within the Term next after the Term in which the Iſſue

1 Debt

2 damages

3. Costs taxed by way of Increase

Some conclude thus (viz.) and the said C.D in Mercy &c. (or) and for the said C.D. amerced &c.
if in Debt or Case
if in Trespass or Detinet, and when either is used put Mercy or amerced as the Case is in the Margent of the Roll.

Iſſue was joined, you muſt continue the *Venire* on the Roll by *Vic' non miſit Breve*; as ſuppoſe an Iſſue joined in *Hilary* Term, and tried in the Sittings after *Eaſter*; after the Words, "The ſame Day, [the Re-" turn of the firſt *Venire*, ſome Day in " *Hilary*] is given to the Parties aforeſaid, " at the ſame Place", ſay, " at which Day " before our Lord the King, at *Weſtmin-* " *ſter*, came the Parties aforeſaid, by their " Attornies aforeſaid, and the Sheriffs of " *London* did not return the ſaid Writ, " nor did they do any Thing thereupon; " therefore let a Jury, as before, come be- " fore our Lord the King, at *Weſtminſter*, " on next after [the firſt " Day of *Eaſter* Term] and who are in no " wiſe of Kin either to the ſaid *A. B.* or " to the ſaid *C. D.* to take Cognizance " upon their Oaths of the whole Truth of " the Premiſſes; becauſe as well the ſaid " *C. D.* as the ſaid *A. B.* have put them- " ſelves upon that Jury. The ſame Day is " given to the Parties aforeſaid, at the " ſame Place. Afterwards, the Proceſs be- " ing continued between the Parties afore- " ſaid, of the Plea aforeſaid, by the Jury " being reſpited between them before our " Lord the King, at *Weſtminſter*, until " next after (the firſt Day " of *Trinity* Term, being the Return of " the *Diſtringas*) then next following, unleſs " the King's Right Truſty, *&c.* as before.

By Vic' non miſit Breve.

New Venire *awarded.*

And in this manner, in Caſe there ſhould be ſeveral Terms between the Term in which your

your Iſſue is joined, and the Term in which it is tried, you continue Awarding *Venires* on the Roll from Term to Term, on the Suggeſtion that the Sheriff does not return the Writs to the Term the *Diſtringas* is ſued out, in which ſhould bear Teſte the Day of the Return of the *Venire*.

You may enter your Iſſues on both Sides the Roll, but ſhould not write too near the bottom on the firſt ſide, where you are to write the Number-Roll, and Chief Clerk's Name thus,

Roll 526. *Ventris.*

And when you have Occaſion to write on the Back-ſide, you begin over againſt the firſt Line of your Memorandum, leaving at leaſt an Inch Margin.

Judgment againſt the ſaid Defendant on Verdict in Debt.

It is therefore conſidered, That the ſaid *Edward* recover againſt the ſaid *Thomas* his ſaid Debt, and the aforeſaid Damages by the ſaid Jury in Form aforeſaid aſſeſſed, and alſo eighteen Pounds for his Coſts and Charges by the Court of our ſaid Lord the King, now here, adjudged of Increaſe to the ſaid *Edward* by his Aſſent, which Damages in the whole amount to

On a Demurrer in Abatement to a Declaration.

Come and defend the Force and Injury, and ſo forth, and pray Judgment of the ſaid Declaration, becauſe they ſay, That the ſaid Declaration, and the Matter contained therein, are not ſufficient in Law to maintain the ſaid Action againſt them the ſaid *Richard* and *Cadogan*; to which ſaid Declaration they the ſaid *Richard* and *Cadogan* have no need, nor are they obliged by the Law of

of the Land to anſwer: And this they are ready to verify; wherefore for want of a ſufficient Declaration in this Caſe the ſaid *Richard* and *Cadogan* pray Judgment of the ſaid Declaration, and that the ſaid Declaration may be quaſhed, and ſo forth.

And the ſaid *John*, *James* and *Mary* ſay, that the ſaid Declaration, and the Matter therein contained, are ſufficient in the Law for them the ſaid *John*, *James* and *Mary* to Maintain their ſaid Action againſt the ſaid *Richard* and *Cadogan*, which ſaid Declaration, and the Matter therein contained, the ſaid *John*, *James* and *Mary* are ready to verify and prove, as the Court, and ſo forth. Wherefore, for that the ſaid *Richard* and *Cadogan* do not deny the ſaid Matter in the ſaid Declaration, nor make any Anſwer thereto, the ſaid *John*, *James* and *Mary* pray Judgment, and their Damages by Occaſion of the Premiſſes to be adjudged to them, and ſo forth: And becauſe the Court of our ſaid Lord the King, now here, is not yet adviſed what Judgment to give of and concerning the Premiſſes, a Day is given to the ſaid Parties, That they be before our Lord the King, *at Weſtminſter*, on next after to hear their Judgment thereon, becauſe the ſaid Court of our ſaid Lord the King, now here, is not yet adviſed thereof. At which Day before our ſaid Lord the King, at *Weſtminſter*, came the ſaid Parties by their Attornies aforeſaid; upon which all and ſingular the ſaid Premiſſes being ſeen, and by the Court of our ſaid

Joinder.

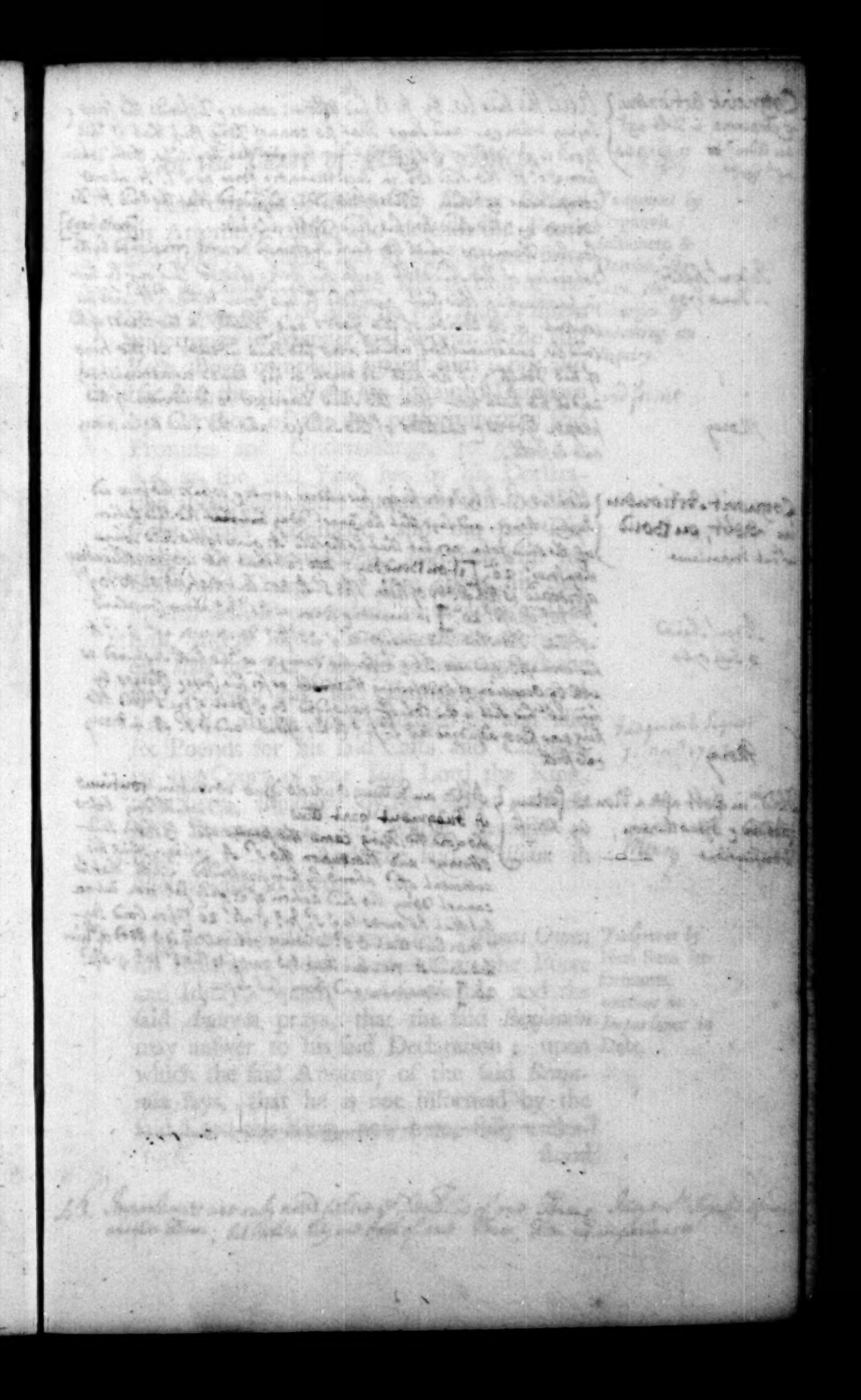
Continuance by Curia adviſare vult.

Interlocutory Judgment for the Plaintiff.

ſtood and conſidered, and mature Deliberation being had thereupon; it appears to the Court of our ſaid Lord the King, now here, that the ſaid Declaration, and the Matter therein contained, are ſufficient in Law for them the ſaid *John*, *James* and *Mary*, to maintain their ſaid Action againſt the ſaid *Richard* and *Cadogan*; wherefore the ſaid *John*, *James* and *Mary* ought to recover their Damages againſt the ſaid *Richard* and *Cadogan*, by Occaſion of the Premiſſes aforeſaid. But becauſe it is unknown to the Court of our ſaid Lord the King, now here, what Damages they the ſaid *John*, *James* and *Mary* have ſuſtained by Occaſion of the Premiſſes; it is therefore Commanded to the Sheriff of *Middleſex*, that by the Oaths of twelve good and lawful Men of his Bailiwick, he diligently inquire what Damages they the ſaid *John*, *James* and *Mary* have ſuſtained, as well by Occaſion of the Premiſſes, as for their Coſts and Charges by them about their Suit in this Behalf expended; and that he ſend the Inquiſition, which, and ſo forth, to our Lord the King, at *Weſtminſter*, on next after under the Seal, and ſo forth, and the Seals, and ſo forth, together with the Writ of our ſaid Lord the King to him thereupon directed, and ſo forth. The ſame Day is given to the ſaid *John*, *James* and *Mary*, at the ſame Place, and ſo forth.

Inquiry awarded.

See after for Entry of the Return of the Inquiry and final Judgment thereon. *fo. 345. R.*



Cognovit Actionem & damna in Debt agt an Admr. ter v. fo: 344 agt Cur.

And the said W. by R: B. his Attorn: comes & Defends the force & Injury when &c. and Says That he cannot Deny But that ye Said Bond is ye Deed of ye Sd George nor but that the Sd W. both detains from ye Sd H. the Said 100li. in Such Manner & form as ye Sd H. above complains agt him Therefore it is adjudged that the Said H. Do recover agt the Said W. his Said Debt and also ..... [roots to end] for his Damages which he hath Sustained as well occasioned by the retaining of his Said Debt as for his Costs & charges Laid out by him in prosecuting this Suit awarded by this Court to the Sd H. with his consent to be Levied of the Goods and Chattles in the Hands of the Said W. unadministred which were the Said George's at the time of his Death if he hath So much in his Hands unadministred and if he hath not then the Said Damages to be Levied of the proper Goods & chattles of the Said W. and the Said W. in mercy and Sofforth.

Judgmt Signed 1. Term 1739.

Mercy

Cognovit Actionem in Debt, on Bond 4th Court Impenlance

And the Sd A by Peter Briggs his Attorn comes & defends the force and Injury when &c. and Says that he Cannot Deny but that the Said Action of the said John nor but that he the said A. owes to the Said John therefore &c. 20li. [if on Bond Say " nor but that the Scribing Obligatory aforesaid is the Deed of him the Sd A. nor but that he owes to ye Sd Jn. ye Sum of 20li.] in manner & form as ye Sd Jn. above Complains agt him. Therefore it is considered ye ye Sd Jn. do recover agt ye Sd A his Debt aforesd and also 36s for his damages wch he hath Sustained as well by occasion of ye detaining that Debt as for his Costs & Charges by him Laid out his Suit in this behalf expended by ye Court of one & which the King now here adjudged to ye Sd Jn. by his Assent and ye Sd A. in mercy &c. &c.

Judgmt Signed 3 July 1740

Mercy

Plea in Debt after a Non est factum pleaded & Issue thereon; by Relicta Verificatione: ——

After an Entring of whole Issue verbatim continued & Judgment part thus " And which Day before the Court the Jury came the parties aforesd by their Said Attorneys and thereupon the Sd A. relinquishing his warrant aforesd abovesd by him pretended Saith that he cannot Deny the Said Action of ye Said Jn. nor but nor but that he owes to ye Sd Jn. ye Sum aforesd 20li [if on Bond Say " nor but that ye Sd Scribing Obligatory is ye Deed of him the Said A nor but that he owes to the Sd Jn. ye Sum aforesd 20li.] in manner and form (ut Supra)

And the ſaid *William*, by *Robert Bicknel* his Attorney, comes and defends the Force and Injury, when, and ſo forth; and ſays, that he cannot deny the ſaid Action of the ſaid *John*, nor but that he the ſaid *William* undertook in Manner and Form as the ſaid *John* above complains againſt him; nor alſo but that the ſaid *John* has ſuſtained Damages by Occaſion of the not performing the ſaid Promiſes and Undertakings, to 57 *l.* 4 *s.* 6 *d.* as the ſaid *John* has by his Declaration above ſuppoſed; and upon this the ſaid *John* prays Judgment, and the ſaid Damages ſo acknowledged, together with his Coſts and Charges by him about his Suit in this Behalf expended, to be adjudged to him, and ſo forth. It is therefore conſidered, that the ſaid *John* do recover againſt the ſaid *Richard* his ſaid Damages, to 57 *l.* 4 *s.* 6 *d.* above acknowledged; and alſo ſix Pounds for his ſaid Coſts and Charges, by the Court of our ſaid Lord the King, now here, adjudged by his Aſſent; which ſaid Damages in the whole amount to 63 *l.* 4 *s.* 6 *d.* And the ſaid *William* in Mercy, and ſo forth.

Judgment by Cognovit Actionem & Damna, *to ſave the Charges of executing an Inquiry.*

vid fo: 146

Judgment Signed 7. Nov.r 1743

Mercy

And the ſaid *Benjamin*, by *Thomas Owen* his Attorney, comes and defends the Force and Injury, when, and ſo forth; and the ſaid *Andrew* prays, that the ſaid *Benjamin* may anſwer to his ſaid Declaration; upon which the ſaid Attorney of the ſaid *Benjamin* ſays, that he is not informed by the ſaid ~~Lord the King, now here, fully under-~~ ſtood

Judgment by Non Sum Informatus, *without an Imparlance in* Debt.

N.B. Imparlances are only uſed where y Decl. is of one Term & another Term, but when they are both of one Term, then no imparlance

Judgmt. Signed of—

ſaid *Benjamin* of any Anſwer to be given for the ſaid *Benjamin* to the ſaid *Andrew* in the Premiſſes; nor does he ſay any thing elſe in Bar or Preclusion of the Action of the ſaid *Andrew*; by which the ſaid *Andrew* remains thereof undefended againſt the ſaid *Benjamin*, and ſo forth. Therefore it is conſidered, that the ſaid *Andrew* do recover againſt the ſaid *Benjamin* his ſaid Debt, and alſo thirty-ſix Shillings and four Pence, for his Damages which he has ſuſtained, as well by Occaſion of the Detaining that Debt, as for his Coſts and Charges by him about his Suit in this Behalf expended, by the Court of our ſaid Lord the King, now here, adjudged to the ſaid *Andrew* by his Aſſent. And the ſaid *Benjamin* in Mercy, and ſo forth.

Judgment ſigned the — Day of — 1738

A: l: for Coſts &c.

Mercy

Nil Dicit *in Debt of the ſame Term*

And the ſaid *Charles* in his proper Perſon comes and defends the Force and Injury, when, and ſo forth, and prays Licenſe to Imparle to the ſaid Bill; and it is given to him, and ſo forth. And upon this a Day is given to the Parties aforeſaid, before our Lord the King, at *Weſtminſter*, until next after (the Day the Rule to plead is out) *to wit*, to the ſaid *Charles* to imparle, and then to anſwer, and ſo forth. At which Day before our Lord the King, at *Weſtminſter*, comes the ſaid *Anthony* by his Attorney aforeſaid; And the ſaid *Charles* at that Day though ſolemnly required, comes not, nor does he ſay any thing in Bar or Preclusion

or ye laſt day of ye Term, if one intervene.

Judgment ſigned ... day of ... 1739

Non Sum informatus in Case with. at Jagard.

" as before to y. Lordp." [Mich. 38 E. It remains therefore adjudged &c. 38 E. 3. Cr. (and there so in y. Lords Case Mar.) Forwhich the said It. ought to recover agt the said D. his damages by occasion of the premisses But because it is unknown to the Court of our Lord the King what Dam-ages, [as to in as in fo: 146. at mark (A)]

Cognovit Actionem where deft. confesses ye Damages ought to be referred to Expence of an Inquiry. — — —

And Now at this day [to wit] on Saturday next after 8 Days of St. Hil. in this same Term untill which day ye Sd C. B. had leave to imparle to ye Sd Bill & then to answer thereunto &c. before our Lord ye King at Westminster came ye Sd G. B. by his Attorney aforesd and prays that ye Sd C. B. may answer his Sd Bill &c. And ye Sd C. B. in his proper person comes and — defends [&c. go on as in fo. 113]

How to Sign & Enter upon ye above Judgment

Make an Incipitur on Double half Crown with ~~a~~ a proper Memorandum as in fol. 108 & 109 — It must be on Double ½ Crown let ye nature of ye action be what it will; — Having likewise entered Warrt. of Attorney on ye Incipitur on ye Roll as in Comon Cases, Carry ye Paper Judgmt. & ye Roll to Mr Lantrow who will Sign ye Judgmt. as to ye Damages & will leave a blank for ye Costs (if it be not Settled with ye Damages) Then Carry it to ye Master who allows in ye Gross abt. 6 or 8s Costs. Then Carry it back to Mr Lantrow who will enter ye Costs likewise in his Judgmt. Book. You pay Mr Lantrow .... for Signing &c ... for ye Masters taxing ye Cost.

N3 If you have not Occasion to Sign ye Judgmt. till 2 or 3 Terms — after that of ye Writ & Declr. is you need make only one Imparlance to ye 1st. Day of ye Term of ye Writ you Sign Judgmt. and take no Notice of ye intervening Term

The above Serves as well for Actions in Case as in Debt

....

of the ſaid Action of the ſaid *Anthony*, by which, &c. (as in the laſt to the End.)

Money

And now at this Day, *to wit*, on next after (the firſt Day of the Term Judgment is entered) in this ſame Term, until which Day the ſaid *Charles Danvers* had Licenſe to Imparle to the ſaid Bill, and then to anſwer thereunto, and ſo forth, before our Lord the King, at *Weſtminſter*, the ſaid *Andrew Baker* comes by his Attorney aforeſaid; and the ſaid *Charles Danvers*, although at the ſame Day ſolemnly required, comes not, nor does he ſay any Thing in Bar or Preclusion of, &c. (as before to the End.)

Nil Dicit *in Debt, with an Imparlance.*

And the ſaid *Edward* by *A. B.* his Attorney, comes and defends the Force and Injury, when, and ſo forth; And the ſaid *Abraham* prays that the ſaid *Edward* may Anſwer to his ſaid Declaration; And upon this the ſaid *Edward* prays Licenſe to Imparle to the ſaid Bill of the ſaid *Abraham*, until next after (the Day the Rule is out) and it is given to him, and ſo forth. The ſame Day is given to the ſaid *Abraham*, at the ſame Place, and ſo forth; at which Day before our Lord the King, at *Weſtminſter*, comes the ſaid *Abraham* by his Attorney aforeſaid; and the ſaid *Edward*, at that Day, though ſolemnly required to anſwer, comes not, nor does he ſay any thing in Bar or Preclusion of the ſaid Action of the ſaid *Abraham*; by

Nil Dicit *in Caſe, of the ſame Term with the Declaration.*

'Tis best to omit that w.ch is here struck out, if there be no impediance

which the ſaid *Abraham* remains thereof undefended againſt him, and ſo forth; For which the ſaid *Abraham* ought to recover againſt the ſaid *Edward* his Damages by Occaſion of the Premiſſes; but becauſe it is unknown to the Court of our Lord the King now here, what Damages the ſaid *Abraham* has ſuſtained in this Caſe, by the Occaſion aforeſaid; It is therefore Commanded to the Sheriff, That by the Oath of twelve good and lawful Men of his Bailiwick he diligently inquire what Damages the ſaid *Abraham* has ſuſtained, as well by Occaſion of the Premiſſes, as for his Coſts and Charges by him about his Suit in this Behalf expended, and that he ſend the Inquiſition, which he ſhall thereupon take, to our Lord the King at *Weſtminſter*, on next after (the Return) under his Seal, and the Seals of thoſe by whoſe Oaths he ſhould take the ſaid Inquiſition, together with the Writ of our ſaid Lord the King to him thereupon directed. The ſame Day is given to the ſaid *Abraham*, at the ſame Place. At which Day before our Lord the King, at *Weſtminſter*, comes the ſaid *Abraham* by his Attorney aforeſaid; And the Sheriff, *to wit*, *A. M.* Eſq; Sheriff of the ſaid County of returned a certain Inquiſition before him, taken at in the ſaid County of on the Day of in the Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, and ſo forth, by the Oaths of twelve good

Inquiry Awarded.

The Return.

Final Judgment to be entered by one of the Clerks of the Chief Clerk if not to be entered in

ind. fol. 227. 345

good and lawful Men of his Bailiwick; by which it is found, That the ſaid *Abraham* has ſuſtained Damages by Occaſion of the Premiſſes, over and above his Coſts and Charges by him about his Suit in this Behalf expended, to one hundred Pounds; and for thoſe Coſts and Charges, to forty Shillings. It is therefore conſidered, That the ſaid *Abraham* recover againſt the ſaid *Edward* his Damages aforeſaid, by the ſaid Inquiſition above found; and alſo fourteen Pounds, ninteen Shillings and ſix Pence for his ſaid Coſts and Charges, by the Court of our ſaid Lord the King now here adjudged of Increaſe to the ſaid *Abraham* by his Aſſent, which Damages in the whole amount to 116*l.* 19*s.* 6. And the ſaid *Edward* in Mercy, and ſo forth.

Judgment ſigned Day of 1738.

Mercy

And now at this, *to wit*, next after (the firſt Day of the Term Judgment is entered) in that ſame Term, to which Day the ſaid *Chriſtopher Denton* had Licenſe to Imparle to the ſaid Bill, and then to anſwer, and ſo forth, before our Lord the King, at *Weſtminſter*, came *Evan Thomas* by his Attorney aforeſaid, and prays that the ſaid *Chriſtopher Denton* may anſwer his ſaid Declaration; And the ſaid *Chriſtopher Denton*, although at that Day ſolemnly required comes not, nor does he ſay any thing in Bar or Preclusion of the ſaid Action; by which the ſaid *Evan Thomas* remains thereof undefended againſt him; For which the ſaid *Evan Thomas* ought to

Nil Dicit in *Caſe with an Imparlance.*

recover againſt the ſaid *Chriſtopher Denton* his Damages by * Occaſion of the Premiſſes. But becauſe, &c. (as before.)

If in Treſpaſs, a Gueſt ever is loſt, amerced inſtead of Mercy in fol. 138.

* If in Treſpaſs you ſay, by Occaſion of the ſaid Treſpaſs.

If in Aſſault, by Occaſion of the ſaid Treſpaſs and Aſſault.

If in Treſpaſs, Aſſault and Impriſonment, by Occaſion of the ſaid Treſpaſs, Aſſault and Impriſonment.

If in Covenant, by Occaſion of breaking the ſaid Covenant.

If in *Aſſumpſit*, by Occaſion of the not performing the ſaid Promiſes and Undertakings.

No Plea-Roll to be filed after the Term following that, which it ought to be filed of.

No Plea-Roll to be filed after the End of the Term next following that of which it ought to be filed, unleſs by a Rule of Court. *Eaſter* 9 *W.* 3.

Time for filing Rolls.

Every Attorney ought to bring into the Office all his Rolls fairly ingroſſed by the Times limited by former Rules, *viz. Mich.* 9 and *Trin.* 10 *W.* 3. That is to ſay, his Rolls of *Trinity*, *Michaelmas* and *Hilary* Terms before the Eſſoin-Day of every ſubſequent Term, and his Rolls of *Eaſter* Term before the firſt Day of *Trinity* Term; and no Attorney at large, or other Perſon ſhall take any Number, or file any Rolls, but the Clerks of the Chief Clerk only. *Mich.* 5 *Annæ.*

But

How to enter Judgment by Default or Confession on the Roll [N.B. the underneath is an Debt & final.]

Make a Margin of an Inch from y Side, Then about 9 Inches from y Top begin thus

A Writ of Michas Term in the 16 yeare of King Geo: the Second between Sr Wm Lee Knight

London R: S. puts in his place G: G. his Attorney agt. T. T. [otherwise called &c.] in a Plea of Debt

London T: T. puts in his place T: S. his Attorney against the Bill of R: W. in a Plea of Debt

London Be it Remembered That on next after 3 weeks from the day of St Michael [the first day of this term] in this same Term before our Lord the King & King at Westmr. came R: W. by G. G. his Att. and brought into the Court of our S.d Lord the King then here his certain Bill agt. T. T. [otherwise called &c. [Esqr.] being in the Custody of the Marshal of the Marshalsea of our S.d Lord the King before the King himself of a Plea of Debt [or as y case is] and there are pledges of prosecution (to wit) John Doe & Richd. Roe which Said Bill followeth in these words London to wit Rob. W. Complains of &c [&c as verbatim thro' y Declr.] [Judgment part, and write at y bottom of y Roll thus

Roll. 152 [Esqr] Anthony & Bigg

Mercy

Signed 6. Dec.r 1739.

N.B. Signing Judgt. is nothing but writing y Name of y Judge at y bottom of y Roll.

Then Docket it thus, make an Entry on a bit of paper in y following form

The Entry of T: S. Gent one of y Attorneys of y Court of Kings Bench of y Term of St Michael in y 16th Year of King Geo the Second

London (to wit) The Entry of a Judgmt. in Debt upon a Bond (or Mutuatus as y case is) between R: W. Plff & T. T. Deft as well for 50 Debt as 6 Pence Costs & Damages } Roll 152

N.B. The Costs on Signing Judgt. are 1: 0 for Docket taking 3 Affts. &c — 1: 0 for Docket &c: if Deft has had no Imparlance 3: 4 if you have had so many Judgts. to Sign at once.

Carry this Entry & Roll to Mr Lowndes & he keeps y Entry & marks y Roll for wch he is p.d 0 - 3 - 0 & 4. for a Rule for Judgt. Then Carry y Roll to Mr Tilly & [Bos & Sharles & he will file y Roll for wch he is paid 4 pence for every mem.r allowing 4: for every Roll

If you have many Judgments of one Term to Docket then write on a Bit of Paper thus

The Entrys of T: S. Gent. &c. [as above]

London (to wit) The Entry of a Judgmt. in Debt upon a Mutuatus betw. C. B. Plff & R: F. Deft as well for 100 Debt as 6 Pence Damages — } Roll 50

Somerset (to wit) not Guilty in Trespass between A. B. Plff & C. D. Deft — — — — — — — — — — — } Same Roll Roll 51

Devon (to wit) &c. [as above made] — — — — — —

Dorset (to wit) The Entry of a Judgmt. by Default in an Action of Trespass upon the Case Between G. L. Plff & A. F. Deft — } Roll 93.

And Mr Tilly's Bill takes 4: for each Roll. v. 136.

& attorns 4: for each Roll.

Scire ffac:

Si. fa. by Baron & feme, ye Death of one of them shall abate it. Hutton's Repr.^{tr} 37

a Si. ffa. to revive a Judgt. must be brought in ye Same County ye first Action was Laid in; Roberts Repr.^{tr} 4. Musgrave vers. Wharton

But the *Cuſtos Brevium*, in Indulgence of the Clerks, attends the Day but one before every Term, except *Trinity*, when he attends the Day preceding that Term to receive and file their Rolls.

Judgment to be revived by Sci. Fa. *if no Execution within a Year.*

If no Execution be ſued out within a Year after Judgment is obtained, the Judgment muſt be revived by *Scire Facias*; and the Plaintiff may, at any Time within a Year of the Iſſuing the *Scire Facias*, ſue forth any Execution, and continue the ſame on the Roll on which the *Scire Facias* is entered; but if he doth not take out Execution within the Year, the Judgment muſt be again revived by *Scire Facias*, as at firſt.

Sci: ffa. ag.t Bail vid. fo. 187 &c.
D.o ag.t to revive a Judgment vid. fo. 211. &c.

Judgment entred 10 *Years* Sci. Fa. *to be moved for.*

If a Judgment has been entered ten Years, and no Execution taken out, the Plaintiff cannot ſue out a *Scire Facias* to revive it without Leave of the Court.

Execution ſued out and continued on the Roll as effectual as Sci. Fa.

Upon a Judgment obtained, and all Parties living, if a *Fi. fa. Ca. Sa.* or *Elegit* be taken out within the Year, and returned and awarded upon the Roll, the ſame may be continued down from Term to Term to the Time of the Execution thereof, although after the Year, and ſhall be as good as if the Judgment had been revived by *Scire Facias*.

Judgment may be entered if Defendant dies after Day in Bank.

If the Defendant appear and imparle until the firſt Day of the next Term, and die after the Day in Bank, yet if a Rule be given for Anſwer, and no Plea be pleaded, Judgment may be entered againſt him

that next Term by Default, as of the firſt Day of the Term.

Of Executions.

Executions. THERE are three Sorts of Executions, *viz.* a *Capias ad Satisfaciendum*, againſt the Body, a *Fieri Facias* againſt the Goods and Chattels, and an *Elegit* againſt the Goods and Chattels, (except the Oxen and Beaſts of the Plough) and againſt one Moiety of the Defendant's Lands and Tenements.

A Ca. Sa. *in Debt.*

Ca. Sa. in Debt. *GEORGE* the Second, by the Grace of God, King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, and ſo forth, To the Sheriff of *Middleſex*, Greeting: We command you, that you take *C. D.* (if there be an *Alias dict*, put it in) if he may be found in your Bailiwick, and keep him ſafe, ſo that you may have his Body before Us at *Weſtminſter*, on next after to ſatisfy *A. B.* of one hundred Pounds of Debt, which the ſaid *A. B.* lately in our Court before Us recovered againſt him; as alſo which were adjudged to the ſaid *A. B.* in our ſaid Court before Us, for his Damages which he ſuſtained as well by Means of the detaining the ſaid Debt, as for his Coſts and Charges by him about

Not ſigned — — —
Bailiff — — 2 — 0 — 7

fa: Sa.

Cant be had out after an Elegit if unless a Nihil is returned on ye Elegit, or y^t Certain Goods were buried in pt. of ye Debt, then it may as it may after a fi: fa. if returned as above. 1 Roll Abr. 904, 905
no Execution can issue after a Ca. Sa. it being ye plain Intt Execution Ca R. 5. 86 unless a Writ of Error
in Execution on a Ca Sa. then an Elegit or fi. fa. may issue within ye Year & Day or afterwards as the
Judgm^t being revived by Sci: facias, by ye Stat. of 21. Jac. 1. c. 24
or if Writ escapes from ye Sheriff & no return made of ye Ca: Sa. nor filed, nor any record made
thereof then an Elegit or fi. fa. &c. 1 R. Abr. 904
It lyes not unless it be in such an action wherein & ag^t a person ag^t whom a Capias doth lye at y^e
beginning as Debt &c^t. In Case Trespass vizt Armis &c Covenant &c^t Shepland 261 &c.
Note we grant all Common Pleas Suits Judgm^t for Debt or Damages but when ye Origin^l Action doth there lye Breaches &c.
Cal. 138
It lyes not for recovery of Damages in a real Action Shep. 262
nor ag^t a Duke Earl or Baron or their Wives nor ag^t an Heir or Ex^t but in some special Cases. Ibid^m
as where a Devastavit is returned ag^t Ex^t or Adm^t then a Ca. Sa may go ag^t ye Body & fi. fa. ag^t ye Goods

Fi: fa. or Elegit &c.

Cant issue after a Ca. Sa. unless Writ dyes in Execution as above
nor after an Elegit Cal. Rep. 143. 147. Shepland 262 unless ye Elegit is returned Nihil or y^t certain
goods were buried in pt. of ye Debt as supra
If a Nihil be returned on a fi. fa. or y^t goods are buried in pt. of ye Debt & ye Debt is not satisfied an
Elegit may issue & if a Nihil be returned thereon or y^t certain goods are buried in pt. of ye Debt
& y^t ye Debt is not satisfied by ye Elegit nor fi. fa. then a Ca. Sa. may issue. Cal. Rep. 138 —
1 R. Abr. 905. Shep. 262
on a fi. fa. Goods or Chattels real or pers^n. y^t ye Writ hath at ye time of Execution awarded may be taken
as Lease for Years Cattle Corn Household Stuff &c apparel &c ye like Ca. R. 8. 171. 7. 39
but not Goods & Chattles a Man hath as Ex^t or Adm^t. Plow. 525
nor Goods pledged & not redeemed or leased for any term & not expired, nor good distrained
& remaining in Distress, nor Goods taken in Execution for another man & another Debt, nor effects of Trust
Cal. w. are not greatly bound over Shep. 267
These goods may be taken — Goods I have ye use of &c^t. a Goods delivered to me to deliver over to a
3d P. a Lease for Years wch a Man hath in right of his Wife, altho he dyed after Execution
taken out & before it is executed & a Lease for Years in Joint Tenancy but if Writ dyes before
Execution awarded ye Jointress survives Shep. 267 for more see 1 Rol. Abr. 893
a Tenancy held for Rent cannot be taken 1 Ro. 891
no Writ of Execution to bind ye Property of Goods, but from ye Delivery of it to Sheriff. 29. C. 2. c. 3
Goods & Chattles in Mixed Lands &c. Leased for Years &c. not to be taken in Execution or extended
unless before removal ye Landlord is discharged his Arrears of Rent not exceeding a Year
8. Ann. c. 17. & after ag^t Goods may be taken in Execution for Rent
Debt & Damages to be recovered by Sci: fa ye only Debt wch binds Goods
as Annuity by Fi. fa. or Elegit 1 R. Abr. 900 if Sheriff may sell taken on this Writ but if by Elegit
& Chapter a Nay otherwise on Elegit Cal. 136

Elegit

Cant be had out after a Ca. Sa altho a Non est inventus is returned thereon 1 Rol. Ab. 904
but it may be had out if Writ dyes in Execution or a Ca. Sa. or Escapes from ye Sheriff & no return made of Ca. Sa. &c
as above Fit. Ca. Sa. If a Debt be executed before Debt & Damages satisfied he may have another Execution ag^t y^e
It may be had out after fi. fa. but not & Contra Cal. Rep. 143. 147. 32 H. 8. c. 5
No Execution to be had out after this & entered of Record unless a Nihil be returned thereon & that
goods are buried in pt. of ye Debt then a Ca. Sa or fi. fa. within ye 1st & Day, but if it be returned y^t
certain goods are buried in pt. of Debt, then a Ca. Sa. only within ye 1st Year & Day, 1 R. Ab. 905
But it seems if any Lands are extended no Execution can then afterwards be had out
Lands or Tenem^ts are to be extended till ye Debt is paid & not ye Costs or Damages 2 Inst. 395. 6
4. Rep. 67 Cal. Rep. 136

of what Estate

a moiety of
It may extend all Manner Lands Rent Reversions & Hereditaments a Man has any Estate a Inh. at ye time
of Judgment a Fee Tail or for Life into whose Hands soever they afterwards come a moiety of
a moiety of Lands held by Joint Tenancy as long as Debt lives & a moiety of ye Estate if he survives his Companion
if Tenant from Year to Year for there 2 Lives it is extendable Shep. 267 cont.

Elegit

Lands wch a Man has in Extent or a Stat. Merch^t, Lands in ancient Demesne may be extended 1 Ro. Ab. 888. rents issuing out of Lands in ancient demesne may be ec. 5. R. 105. Lands of a Bishop may be taken ec. 5 Ed R. Lands wch an Husband has during ye Coverture may be taken ec and Lands wch a^nt has to any use may be taken ec. All Cal. Ther. 136 Lands either of others are seized in Trust for him agt. whom ye Execution is laid ag. C. 2. c. 3 — Where an Heir has made over Lands descended to him before debt brought this Execution upon a Judg^mt may be taken agt. such Heir for ye Debt of his Ancestor as if it was his own Debt 3 & 4. W. & M c. 14. If an action of Debt is brot agt. an Heir & he aliens ^ pending ye writ, The Land which he had at ye time of Origin^l Writ here shall be charged Woods Inst. 607 *

a Term for y^rs may be extended by Elegit but it is much less trouble to levy it & sell it by Fi. fa. Cal. Th. 137 & an Annuity by Fi. fa. or Elegit 1 Rol. Ab. 900
All Goods & Chattels (except Beasts of ye Plow) ye Land as on Fi. fa. Goods bo bona fide not Sable

What not to be extended by Elegit

a Copyhold Estate, a Lease made by a Copyholder of Copyhold Lands by license of ye Lord not * extendable in ye Hands of Lessee 1 R. Ab. 888 * In Debt agt. an Heir on a Bond who has nine by descent only one Rent Reversion (expectant on an Estate for life) Ibid shall have Judgm^t to have Execution of it when it happens Ibid [illegible] Ibid ye 900
a Right only to Land, an Annuity (Quod Nota. 607) & 1 Rol. Ab. 900 Land ye Husband had in right of his Wife in Fee or for Life or after the death not liable Shep. 267

It is Say that on an Elegit, if there be goods & Chattels enough to satisfye ye Debt ye ye Land ought not to be extended, but if not it may.

Sequestration

If a Judgm^t is recovered ag^t a Clergyman & he has nothing to satisfye it but his Living, whether Vicarage or Parsonage, a Fi: fa must be sued out & returned by ye Sheriffe Nihil nisi bona Ecclesiastica ec. Then sue out a fi: fa: de bonis Eccl: directed to ye Bishop of ye Diocese, who thereupon sequesters ec. but care must be taken y^t ye ffi: fa. de bonis. is renued every term & before ye former agt writ is returnable. Wood. 608

vert.

about his Suit in that Behalf expended; whereof the ſaid *C. D.* is convicted, as appears to us of Record, and have then there this Writ. Witneſs Sir *William Lee* Knight, at *Weſtminſter*, the Day of in the Year of our Reign.

Ventris.

If in Caſe upon Promiſe, ſay, To ſatisfy *A. B.* of one hundred Pounds, which the ſaid *A. B.* lately in our Court before Us at *Weſtminſter* recovered againſt the ſaid *C. D.* for his Damages which he ſuſtained as well by Means of the not performing certain Promiſes and Undertakings lately made by the ſaid *C. D.* to the ſaid *A. B.* as for his Coſts and Charges, *&c.* *In Caſe.*

A Teſtatum Ca. Sa.

Teſtatum Ca. Sa.

GEORGE the Second, by the Grace of God, King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, and ſo forth, To the Sheriffs of *London*, Greeting: Whereas, we lately commanded our Sheriff of *Middleſex*, That he ſhould take *C. D.* if he might be found in his Bailiwick, and ſafely keep him, ſo that he might have his Body before Us at *Weſtminſter*, at a certain Day now paſt, to ſatisfy *A. B.* of [as the Sum and Action is] whereof the ſaid *C. D.* is convicted, as appears to Us on Record, and our ſaid Sheriff of *Middleſex* at that Day returned to Us, that the ſaid *C. D.* was not found in his Bailiwick; where-

Execution
yet it is ſaid a Teſtatum
in H. B. cant be regularly
ſued out till ye Execution
in ye proper County is
returnable & Further
y^t on a Judgm^t in H. B.
you may take out Execution
in any County

upon, on the Behalf of the ſaid *A. B.* it was ſufficiently atteſted in our Court before Us, That the ſaid *C. D.* doth lurk and ſecret himſelf in your County; We therefore command you, that you take him, if he may be found in your Bailiwick, and keep him ſafely, ſo that you may have his Body before Us at *Weſtminſter*, on next after to ſatisfy the ſaid *A. B.* of the Debt and Damages or (Damages) aforeſaid; and have there then, *&c.*

A Fi. Fa. *in Caſe.*

Fi. Fa. *in Caſe on Premiſe.*

not ſigned — 0-0-0
ſealing — 0-0-7

GEORGE the Second, by the Grace of God, King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, and ſo forth, To the Sheriff of *Lincoln* Greeting: We command you, that of the Goods and Chattels of *C. D.* in your Bailiwick you cauſe to be made One Hundred Pounds, which *A. B.* lately in our Court before us at *Weſtminſter* recovered againſt the ſaid *C. D.* for his Damages which he ſuſtained, as well by Means of the not performing certain Promiſes and Undertakings lately made by the ſaid *C. D.* to the ſaid *A. B.* as for his Coſts and Charges by him about his Suit in that Behalf expended; whereof *C. D.* was convicted, as appears to Us of Record, and that you have that Money before Us at *Weſtminſter*, on next after to render to the ſaid *A. B.* for his Damages aforeſaid; and that you have there then, *&c.*

If

Execution

In wt time may be had after Judgt.

Fi: fa: Elegit or Ca. Sa. may be had out any time till after a Yr. & day after Judgt
If after a Yr & day after Judgmt. Judgt. might be revived by Sci: fa. & if Deft dont
appear & plead thereto Executione Judgt. will be had thereon & then Execution
may issue w.o Sci. fa. was given by Stat of 13. E. 1. c. 45
But an action of Debt may be brot on ye Judgt. after ye year & Day, wch was
ye only practice before ye St. Statute
If a Judgt. is affirmed in a writ of Error altho ye Yr. & day is past an Execution
may issue wthout a Sci. fa. any time till after a Yr. & day after ye affirmance, altho
it is in ano Court, for ye affirmance is a new Judgt. 1 Rol. Abr. 899. 5. R. 68.
It is ye same on a Nonsuit in a writ of Error or if a writ of Error be discontinued. Ibid
In Debt on bond agt. an Heir who has Assets per descent, only a bare Reversion
expectant on an Estate for Life, The Plto may have Judgt. for Execution quando
accident, In which Case Execution may be had out within a year & day after
ye happening without a Sci: fa. 1 Roll Abr. 930

In Debt if Deft confess ye action in pt. & plead to issue as to ye residue whereby Plto
has Judgt. for that which is confest, yet he cant have execution till ye issue is tryed
because he is to recover for ye part which is Confest, otherwise if ye Damage is
released, or if Plto is nonsuited for ye ye impediment viz. ye Damage is removed 1. Roll
Abr. 898.

Where it must be joint

If a Man recover jointly agt 3. ye Execution must be joint agt. all together, & in a Judgt
in Debt agt two the Execution must be joint agt. both & not agt. one alone 1 Roll. Abr. 888
But ye Sheriff may arrest all but one, or may levy of all or but one, & if wch Satisfaction
ye rest are discharged. Shep. 266. See. 3d Rep. 67. for a Joint Execution
There can be but one Execution for Joint Plts as on an Information upon Stat. of Recusants
if judgt. be given for 100li 2 pts to ye K. & ye other 3d to ye informer in this Case there must be
but one Execution for both & not one for ye K. & ano. for ye Informer 1 R. Abr. 888

Execution

2 Where it may be Separate agt many Defts.—

If 2. acknowledge a Recognizance of 100. jointly & severally, yt Cognizee may sue Scir: Fac: agt yt Cognizors. 2 Inst. 395. Fitz. N. B. 267.
In an action of Debt agt P. S. & 2 become 2 Bail. the Execution may be agt either of yt Bail without naming yt other / for each of yt Bail is liable Severally. 1 Roll Abr. 896.
If a Judgmt be had agt 2 or more on a joint & Sev. bond Plte may arrest them all by one or more Ca. Sat & if one dyes in Execution yt other is not discharged. but yt Plte can be satisfyed his debt but once & therefore if one of yt Defts pay yt Plte all yt rest may be discharged; The same where yt Plte Sues out Sev: Fi. fa's or Elegits & receives full Satisfaction by one; Shep. 265. 270. 271. if he take an Obligation for one part & the other part & dies
In Debt on Bond agt 2. if 5. Damages be rated to be recovered of each of them— Severally according to yt Writ & Plte sues Execution agt one / with Satisfaction / He can never have Execution agt yt other. 1 Roll Abr. 896.
The same on two Judgmts in 2 Courts Ibid.
The same on a Judgmt agt 2 for a Trespass by them Ibid.
on a Judgmt agt 2 severally, Plte takes out an Elegit agt one He can have no Execution agt the other. 1. Roll. Abr. 896. Shep. 263 not even where yt Land is Limited by prior Wills. Holt. 2.

2 Where ye Death of one of ye Joint or Sev. Defts dont abate ye Execution vs Judgmt agt ye Survivors

2 Obligors jointly & severally, the Obligee recover in K. B. agt one, & has his body in Execution & afterwards recovers agt ye other in C. B. & takes his Goods & a Moiety of his Lands by Elegit, By yt last Execution yt Plte is Satisfyed & yt other Deft may be discharged by Audita Querela 1. Roll Abr. 896. 2 But if both their Bodys had been taken in Execution & one of them dies yt other is not discharged, or if one is taken in Execution & dyes, the other may be taken in Execution, for ye death of one of them dont satisfye yt Plte. 1 Roll Abr. 903
If a Judgmt be had agt Baron & Feme in Trespass, Execution shall be agt ye Feme after ye Barons death. 1. R. Abr. 889
If a Statute be acknowledged to Baron & Feme the Feme shall have Execution after ye Barons death. Ibid. vid title Sci. fa. to renew Judgmt. 2. either party dyes after Judgmt & before Execution & after Entred Judgmt & before Final
for & against Heirs Extr. or Admr.
If a Plte has a Judgmt for a Recovery of Lands or for Debt or for Goods & dyes before Execution his Heir must have Execution & not ye Extr. or Admr. If for a Term of years, Goods, rents of Lands Debt or Damages his Extr. or Admr. not ye Heir. 1 Roll. Abr. 888. 9. Shep. 363.
But if Lands & Damages are recovered together, the Heir to have Execution of ye Lands and ye Extr. or Admr. of ye Damages by Sci. fa. Shep. 864
If Plte or Deft dye after Interlocutory Judgmt & before final Judgmt or after final Judgmt Judgmt. cant be taken out without Sci. fa. 8 Eq. 6. M. c. 10. 2 H. 4. 1. Rol. Abr. 883, 900. bid. post. fo: 211. 2.
But if Execution is actually awarded & the Deft dyes, the Sheriff may take ye Goods in ye hands of his Extr. or Admr without Sci. fa. 1. R. Abr. 889. 3 Personall actions dye as Trespass Assault & Battery by ye with ye Deft

If in Covenant, ſay, Which he ſuſtained as well by Means of the breaking a certain Covenant lately made between the ſaid *C.* and the ſaid *A.* as for his Coſts and Charges, *&c.* *Covenant.*

If you make out a *Ca. Sa.* or a *Fi. Fa.* after a *Sci. Fa.* has iſſued, after the Words "as it appears to us of Record" add, And whereupon in our ſaid Court before Us it was conſidered, That the ſaid *A. B.* might have his Execution againſt the ſaid *C. D.* of the Damages aforeſaid, [or Debt and Damages, as the Action is] and that you have, *&c.* *If after* Sci. Fa.

An Elegit.

GEORGE the Second, by the Grace of God, King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, and ſo forth: Whereas *A. B.* lately in our Court before Us at *Weſtminſter*, by Bill without our Writ, and by the Judgment of the ſame Court recovered againſt *C. D.* 100 *l.* of Debt, and alſo 40 *s.* for his Damages, which he ſuſtained as well by Means of the detaining the ſaid Debt, as for his Coſts and Charges by him about his Suit in that Behalf expended, whereof the ſaid *C. D.* was convicted, as appears to us of Record; and afterwards the ſaid *A. B.* came in our Court before Us, and choſe all the Goods and Chattels of the ſaid *C. D.* except the Elegit.

Signing Sign'd Hawley the Chief & Deputy 0-1-8
Seal — — 0-0-7

the Oxen and Beaſts of his Plow, and alſo a Moiety of all and ſingular the Lands and Tenements of the ſaid *C. D.* in your Bailiwick, to be delivered to him according to the Form of the Statute in that Caſe made and provided; and until the ſaid Debt and Damages ſhould be thereupon fully levied: We therefore command you, that all the Goods and Chattels of the ſaid *C. D.* in your Bailiwick, except the Oxen and Beaſts of his Plow, and alſo a Moiety of all the Lands and Tenements of the ſaid *C. D.* in your Bailiwick, whereof the ſaid *C. D.* on the Day of on which Day the ſaid Judgment was given, or ever afterwards was ſeized, you cauſe to be delivered without Delay to the ſaid *A. B.* by a reaſonable Price and Extent; to hold the ſaid Goods and Chattels as his proper Goods and Chattels, and alſo to hold the Moiety of the ſaid Lands and Tenements as his free Tenement, to him and his Aſſigns, according to the Form of the ſaid Statute, until the ſaid Debt and Damages ſhall be thereof fully levied; and that you make appear to Us at *Weſtminſter*, on next after under your Seals and the Seals of them by whoſe Oath you ſhall make the ſaid Extent and Appraiſement in what Manner you ſhall have executed this our Writ; and that you have there then this Writ. Witneſs, *&c.*

The *Ca. Sa.* and *Fi. Fa.* are only ſealed, for which you pay 7 *d.* but the *Elegit* is both

Execution

agt. Bail or principall

In an action of Debt agt. J. S. 2 becomes his Bail. The Execution may be agt. either of ye Bail without reciting ye other, for each of ye Bail is liable severally. 1 R. Abr. 888. vid fo: 187. post

If a Man takes out Execution agt. ye Bail (although without Satisfaction) he can never after resort to any Execution agt. ye princip.ll for he has made his Election, 1. Rol. Abr. 897

and ye same if he first takes out Execution agt. ye princip.ll he cant have Execution agt. the Bail. Ibid.m. Sed Q. ye last: for there must be a Ca. Sa. taken out agt. ye principal & a Return non est Inventus returned thereon before ye Bail can be sued by Sci. fa. otherwise it is Error vid post fo: 187. the Method of suing Bail by Sci. fa. after Judgm.t

If A. is arrested & in prison for want of Bail & afterwards Plt recover Judgm.t agt. him continuing in prison he is not in Execution on ye Judgm.t unless Plt charges him in Execution 1. R. A. 894, 5. Rep. 306. And before Plt charges him in Execution, He may sue out a fi. fa. or Elegit & waive his body. Rep. 262.

Where there are 2 Judgm.ts to two Plts wch. may have ye benefit first

Where there are 2 Judgments & ye Plts on ye last Judgm.t is in possession of Lands by Elegit yet Plts in first Judgm.t may afterwards sue out Elegit & recover ye Lands from ye Plts in ye last Judgm.t Hobd. 60. But it is said in Rep. 270. ye he ye first has an Elegit shall have a ½ of ye whole & ye other the ½ of ye half of ye residue.

charging in Execution

In relation to charging a Dft in Execution already in Prison in Newgate or Fleet vid 1. R. A. 894 &c.

of Title Prior to an Execution

Lands in Execution Limited by prior Title how to be recovered vid. 32. H. 8. c. 5. 1. Inst. 289. 290. a. 2. Inst. 678 &c. 4. R. 66. 13 & 14 C. c. . .

priviledged persons in Execution

Priviledged persons released by Priviledge may be arrested again when the Priviledge ceases. 1 Jac. 1. c. 13. —

ſigned and ſealed; you pay 1 *s.* 8 *d.* to the Chief Clerk for ſigning it, and 7 *d.* to the Sealer for the Seal.

Proceedings by Original.

THIS antient Method of Proceeding, tho' now much out of Uſe is ſtill very neceſſary in many Caſes.

Only Method againſt Peers, who cannot be ſued by Bill, becauſe thereby ſuppoſed to be in Cuſtodia Mareſcalli.

It is the only Method of Proceeding in this Court againſt Peers, who by the Law of the Land are not to be arreſted in any Civil Cauſe whatſoever; and therefore not to be proceeded againſt by Bill, becauſe therein ſuppoſed to be *in Cuſtodia Mareſcalli.*

Bodies Corporate to be ſued only by Original in this Court.

All Corporate Bodies, as Mayor and Aldermen, Dean and Chapter, Maſter and Fellows, *&c.* and Hundredors on the Statute of Hue and Cry, can be proceeded againſt in this Court by Original only.

Several Actions in this Court, only by Original Writ.

No *Quare Impedit*, Writ of Right, *Replevin* and ſuch like, come into this Court, but either by Original Writ, or elſe by being removed from inferior Courts by Writs which are in their Nature Original Writs, and returnable *coram nobis ubicunque*, *&c.* as Writs of *Recordare facias Loquelam*, *Accedas ad Curiam*, *Certiorari*, Writs of Error, *&c.*

No Writ of Error on Judgment by Original but in Parliament.

It is a much more expeditious Way of procuring the Suitor his Right than by Bill, for no Writ of Error lieth on a Judgment obtained by Original Writ, but what muſt be made returnable in the High Court of Parlia-

But a writ of Error may be brought in K. B. after that in ye Exchequer Chamber after that in ye House of Lords on a Judgt. by Original in ye Comon Pleas, So that a writ of Error in ye Comon Pleas will not gain ye Suitor that advantage, which an Original in the Kings Bench will at Supra

Parliament, and that purchaſed and carried on at a very dear Rate, and commonly attended with exemplary Coſts in Favour of the Defendant in Error, if the Judgment be affirmed; whereas, if the Judgment be on an Action brought by Bill, a Writ of Error may be brought returnable in the *Exchequer* Chamber, and from thence, after four Terms Attendance, a Writ of Error may be brought returnable in the Houſe of Lords.

Outlawry

It's Uſe in Outlawing Defendants that conceal themſelves.

It is alſo of excellent Uſe in Outlawing Debtors who are difficult to be arreſted, and lie concealed in Holes and Corners ſpending their Creditors Subſtance.

No Surrender in Diſcharge of Bail on Outlawry. *vid. poſt proceed to Outlawry.* 162.

And *note*, That if the Defendant be arreſted on the *Capias utlegatum*, and Bail is put in, the Defendant cannot diſcharge his Bail by ſurrendering himſelf to Priſon, but he muſt pay the Condemnation-Money, or they for him. *vid. poſt* 162

Cannot proceed by Original in Debt, Detinue, Account or Covenant.

It is ſaid, That no Original Writ may be made returnable in this Court in any Action of Debt, Detinue, Account or Covenant; *ſed quære.*

Original Writ, a Warrant for the Capias.

The Original Writ which is iſſued out of the High Court of *Chancery*, and made out by the Curſitor of the proper County, is not at this Day in general Caſes ſerved on the Defendant, except it be againſt a Peer or a Body Corporate, it being only a Foundation or Warrant for the *Capias*, on which the Defendant may be arreſted, and the Plaintiff have Bail for his Debt.

Method of Proceeding. 8 H. 5. c. 5.

In Order thereto, the Plaintiff's Attorney draws up a *Precipe*, which is to contain the whole Count or Declaration, in which you,

Proceedings by Original in K. Kings Bench -

by the Statute of Additions, muſt ſet forth the Defendant's Eſtate or Degree, or Myſtery, and the Town or Hamlet, or Place and County, where he is or was converſant.

Precipe.

Middleſex. If *A. B.* ſhall make you ſecure of proſecuting his Suit, then put under Security and ſafe Pledges *C. D.* late of *Weſtminſter* in the County of *Middleſex*, Joyner, on a Plea, that whereas [here ſet forth the whole Declaration *verbatim*, till you come to] to the Damage of the ſaid *A. B.* of 36 *l.* Precipe.

Robert Richardſon, Attorney, 8 *May*, 1738.

Returnable whereſoever, and ſo forth, on the Morrow of the *Holy Trinity*.

Affidavit for 20 *l.*

You carry the *Precipe* to the Filacer, who will make out the *Capias* and procure the Original and Return, and file it for you; you pay the Filacer 2 *s.* 6 *d.* for the firſt Count of the *Capias*, and 6 *d.* for every other Count, and the like for the Original which he pays over to the Curſitor, beſides 4 *d.* for filing the Original, making together 5 *s.* 4 *d.* for the firſt Count, and 1 *s.* for every ſubſequent Count. You carry the *Capias* to be ſealed, for which you pay 7 *d.* and then to the Sheriff for a Warrant, for which you pay 2 *s.* 4 *d.*

You muſt be cautious that the Teſte of the Original (which muſt be at leaſt fifteen Days before the Teſte of the *Capias*) be ſubſequent to your Cauſe of Action. You

Fines on Originals.

You pay on Original Writs, where the Damages laid exceed 40 *l.* Fines to the King in the following Proportions.

	l.	*s.*	*d.*
From 40 *l.* to 100 Marks.	0	6	8
From 100 Marks to 100 *l.*	0	10	0
From 100 *l.* to 200 Marks.	0	13	4
From 133 *l.* 6 *s.* 8 *d.* to 166 *l.* 13 *s.* 4 *d.*	0	16	8
From 166 *l.* 13 *s.* 4 *d.* to 200 *l.*	1	0	0
And for every 100 Marks more	0	6	8
And for every 100 *l.* more	0	10	0

The Return of the Original, the Teſte of the Capias, *&c.*

If the Defendant cannot be arreſted on the *Capias*, you may have an *Alias*, and after that a *Pluries*. And *note*, That the Return of the Original is the Teſte of the *Capias*, the Return of the *Capias* the Teſte of the *Alias*, and the Return of the *Alias* the Teſte of the *Pluries*; and ſo on, unleſs the Return of any of them happen on the *Eſſoin* Day before any Term, and then the next Writ muſt bear Teſte the firſt Day of that Term, for it cannot bear Teſte out of Term: And the Original, and all ſubſequent Writs grounded thereupon, muſt have 15 Days between the Teſte and Return of each, except in the Caſes provided for by Statutes of the 13 and 16 *Car.* 2. before taken Notice of.

Fifteen Days between Teſte and Return on Originals.

Common Appearance.

If the Action requires only a Common Appearance, you enter it with the Filacer, and pay him 2 *s.* for it, out of which 1 *s.* is for the Duty. If it requires Special Bail, you

b. 3 16: 6
Special Rule
was in the
like manner

4 a Short
Term Catt.

* If ye Deft. pleads Specially Plts Attorny hath ye Liberty of making up
ye Special pleadings himself without applying to ye Clerk of ye papers for
that purpose. But ye practice for Clerk of papers to make up Books
on Originals with ye Bill, by reason of ye Rule which ye Cl of ye pa[illegible]
thereon to return paper book in 4 days.

of demanding over & Copy of originals

v. 86

After Decl.ⁿ delivered tis usual to demand over & Copy of y Originall Thus viz.ᵗ

In the Kings Bench. R. agᵗ S.

M.ᵗ L. / The Deft. craves over & Copy of y Originall in this Cause Dat.ᵈ 29 May 1749 Wᵐ &c. T. S. attorny for Deftˢ

£.100 Ma

+ 200 M

A Copy whereof is to be Served on ~~Def~~ Pltes Attorny, & if Served before Rule to plead out, Deft. has as many days to plead after over & Copy delivered as he had when he demanded it; as Suppose there were 2 days to run of y Rule to Plead when over & copy demanded then Deft. has 2 days to plead after over & Copy given him; But if over & copy be demanded y day y Rule to plead is out then Deft. must plead y next day after over & Copy given him

Tis Said if over & Copy be not demanded before rule to plead out (pleahaving been demanded) tw'il not prevent Judgment if it be over & Copy be demanded afterwᵈˢ Sed Q. & if it be demanded after rule out & plea demanded, & no advantage taken thereof but over & Copy Given then Deftˢ must plead y day after over & Copy given

over & Copy being demanded (ut Supra) the Pltes must get y Filacer to make out y original & get it Seald, then make Copy of it & deliver it & produce y original & permitt Deftˢ Attorny to Inspect it or read to him agᵗ y Copy.

Deftˢ Attorny must pay 4ˢ 8ᵈ for y Copy. This Copy not to be on Stamp.

Time for putting in Spetial Bail on originᵃˡˢ

The Same as in y Comon Pleas which in London & Middlesex is 4 days from y Appearance day of y Return of y Writ exclusive of y Appearance day, and 8 Days exclusive of y Appear. day in any other City or County. And as Appearance day is usually y 3ᵈ. day after y day of y Return A. Bail Bond on a Spetial Original ~~can be assigned till after~~ in [illegible] Middlesex can be assigned till after y 7ᵗʰ day from y return & in any other County not till after y 11. day from Return &c. And if y last day falls on Saturday Bail on Saturday. Contra by Bill in K. B.

you carry the Filacer a Note of the Names of the Bail, with their Places of Abode and Additions, and he will attend with you before a Judge to put in Bail, of which Notice is to be given to the Plaintiff's Attorney in Writing, and you must observe the Directions before given as to excepting against and adding and justifying the Bail, on which Occasion the Filacer must attend with his Book in Court. *Special Bail.*

The Filacer is p. 16. 6 on putting in Special Bail on an Original wch is the whole Expence thereof

The Method of declaring by Bill is different from that by Original, which begins thus; *Method of declaring.*

Michaelmas *Term in the Twelfth Year of King* George *the Second.*

Middlesex. *C. D.* late of *Westminster* in the County of *Middlesex*, Joyner, was attached to answer *A. B.* on a Plea of Trespass on the Case [as the Action is] and whereupon the said *A. B.* by *R. R.* his Attorney complains, That whereas [then go on with your Declaration as by] to the Damages of the said *A. B.* and therefore he brings his Suit &c. [leaving out the words "as to said &c."] *Declaration by Original.*

Def^t Attorney is to pay 4^s a Sheet for Copy Decl^n as in Comon Cases.

And omit the *Pleg. de Prosequend'* used by Bill at the End of the Declaration. *No Pleg. de Pros.*

You give a Rule with the Clerk of the Rules for the Defendant to plead, as to which the Directions before given will serve. *v. 78.* *Rule to plead* *

Plaint may demand a Plea before subscript

In making up the Issue you begin with the Declaration, and not with a Memorandum, as you do when the Proceedings are by Bill; and at the End of the Issue award the *Venire* thus: Therefore it is commanded *Of making up the Issue.*

* If ye Def^t pleads Specially Plts Attorny hath ye Liberty of making up ye Special pleadings himself without applying to ye Clerk of ye papers for that purpose. But tis ye practice for Clerk of papers to make up Books on Originals as by Bill by reason of ye Rule which ye C^k of ye p^s gives thereon to return paper book in 4 days.

manded to the Sheriff, that he cauſe to come before our Lord the King, from the Day of [the Return of the *Venire*] whereſoever he ſhall then be in *England*, Twelve, and ſo forth, by whom, and ſo forth, and who neither, and ſo forth, to take Cognizance, and ſo forth, becauſe as well, and ſo forth. The ſame Day is given to the Parties aforeſaid, and ſo forth.

In making up the *Niſi Prius* Record, the *Jurata* is thus.

The Jurata *by Original.*

Middleſex. The Jury between *A. B.* by his Attorney, Plaintiff, and *C. D.* late of *&c.* of a Plea of Treſpaſs on the Caſe, is reſpited before our Lord the King, until from the Day of St. *Michael* in three Weeks, whereſoever, and ſo forth, unleſs [as before by Bill to] The ſame Day is given to the Parties aforeſaid.

X Return of Venire w.in 8 Days in Bank.

fo. 111.

N.B. The Day in Bank must be on a return day but 8 Days of Trial on a day certain, as, Friday of 21 of July at 9 a Clock. fo. 111.

Venire facias *on Original.*

N.B. Venires distinguished & Subpœnas by Original are signed by the Filacer.

GEORGE the Second, by the Grace of God, King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, and ſo forth, To the Sheriff of Greeting: We command you, that you cauſe to come before Us from the Day of whereſoever we ſhall then be in *England*, Twelve free and lawful Men of the Body of your County, each of whom has ten Pounds by the Year of Lands, Tenements or Rents, by whom the Truth of the Matter may be the better known, and who are in no wiſe of Kin either to *A. B.* Gentleman, the Plaintiff, or

or to *C. D.* late of *&c.* to make a certain Jury between the Parties aforeſaid, on a Plea of, *&c.* becauſe as well the ſaid *C.D.* as the ſaid *A.B.* between whom the Contention thereupon is, have put themſelves upon that Jury; and have there the Names of the Jurors, and this Writ. Witneſs, *&c.*

The *Diſtringas* is the ſame as by Bill, only putting in the Defendant's Addition, and making it returnable, (*ubicunque.*) *wherſoever ye.* Diſtringas.

The *Subpœna* is nothing different from the *Subpœna* by Bill, except that the Defendant's Addition muſt be inſerted. *Note*; In theſe and all other Writs by Original, in the Concluſion before the Teſte, you leave out the Word [then] ſaying, "And "have there this Writ. Witneſs, *&c.* and not "there then", *&c.* the Place of the Return being *ubicunque*, *&c.* and therefore uncertain. Subpœna.

The *Subpœna* is ſigned by the Filacer, for which you pay him 1 *s.* 8 *d.* and to the Sealer 7 *d.*

As to the reſt you proceed to Trial as by Bill.

If you have a Judgment by Default, and Occaſion to make out a Writ of Inquiry, you begin thus. *Writ of Inquiry.*

GEORGE the Second, by the Grace of God, King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, and ſo forth, To the Sheriff of *Middleſex*, Greeting: Whereas *C. D.* late of *Weſtminſter*, in your County, Joiner, was attached to appear

in our Court before Us, to anſwer *A. B.* of a Plea, wherefore whereas (the Declaration *&c.* as in other Writs of Enquiry, to)----- As for his Coſts and Charges by him about his Suit in that Behalf expended, and that the Inquiſition which you ſhall thereupon take, you ſend to us from the Day, *&c.* [the Return] whereſoever We ſhall then be in *England*, under your Seal and the Seals of thoſe by whoſe Oaths you ſhall have taken that Inquiſition, together with this Writ. Witneſs *&c.*

Teſtatum Capias. In Caſe the Defendant does not live in the County you intend to try your Action, you muſt have a *Teſtatum Capias* to arreſt the Defendant in the County wherein he lives, grounded upon a *Capias* iſſued in the County wherein you intend to try your Action.

Outlawry. If the Defendant is not to be arreſted on the *Capias*, *Alias* or *Pluries*, the Filacer will make you out an Exigent and Proclamation; and if the Defendant does not appear on the Return of the Exigent, and which he may by a common Appearance only, though your Action be for 10,000 *l.* the Filacer will make out a *Capias Utlegatum* either General or Special; the General *Capias Utlegatum* is to take the Body only, the Special *Capias Utlegatum* is to extend the Defendant's Goods and Chattels, Lands and Tenements, and to take his Body alſo: And if the Defendant be arreſted on the *Capias Utlegatum*, he muſt give

Nb there is no Occaſion for an Affid.t of Debt to take out Speſhial Originall for an Outlawry the Debt never ſo large. unleſs you intend to endeavour to get Defft arreſted on ye Cap.s Utlas & Pluries as you go on.

give Bail as before to anſwer the Condemnation. *vid ante. 196*

If the Defendant be a Peer or a Body Corporate, the Sheriff is to ſummons the Party on the Original, and if the Defendant does not appear, the Filacer makes out a *Diſtringas* againſt the Defendant's Lands and Chattels, whereupon the Sheriff returns Iſſues to the Value of, *&c.* whereupon you have an *Alias Diſtringas*, and *Plur. Diſtringas ad Infinitum*, till the Defendant do appear; and if the Sheriff return but ſmall Iſſues, the Court on Motion will order him to return better; and theſe Iſſues are to be eſtreated into the Court of *Exchequer*, and levied on the Defendant's Lands and Chattels to the King's Uſe by way of Forfeiture. *Proceedings againſt Peers, &c.*

Proceedings relating to Attornies.

YOU are not to arreſt him, be the Cauſe of Action what it may, he being always ſuppoſed to be in Court, but you muſt file a Bill againſt him with the Clerk of the Declarations written on Parchment, with a double Penny Stamp, and deliver him a Copy of it on double Penny Stampt Paper, and give a Rule for him to plead thereto. *But if he gives Bail it is ſaid he has waived his Priviledge*

But an Attorneys Priviledge is perſonal & does not extend where he is ſued in Auter Droit, as if he be Truſtee, Exec.ᵗᵒʳ &c. but Q. if even in this Caſe he muſt not be ſued by Bill

The Form of a Bill againſt an Attorney.

Bill againſt an Attorney.

Middleſex. *A. B.* complains of *C. D.* Gent. one of the Attornies of the Court of our Lord the King preſent here in Court, before the King himſelf in his proper Perſon, for that, *to wit*, that whereas [the reſt as in other Declarations to] And thereupon he brings Suit, and ſo forth.

R. R. for the Plaintiff; Defendant in Perſon. } Pledges of Proſecuting } *John Doe*, and *Richard Roe.*

Of *Michaelmas* Term in the twelfth Year of the Reign of our Sovereign Lord *George* the Second, and ſo forth.

What Time an Attorney has to Plead.

If the Bill be filed, and a Copy thereof delivered 4 Days excluſive before the End of the Term, including *Sunday* as one, the Defendant muſt plead as of that Term, the Plaintiff having entered a Rule to Plead, and demanded a Plea; but if the Bill be not filed, and a Copy delivered within that Time, the Defendant is entitled to have an Imparlance.

If an Attorney be Plaintiff, he makes out an Attachment of Privilege in this Form.

Attachment of Privilege for an Attorney.

GEORGE the Second, by the Grace of God, King of *Great Britain*, *France* and *Ireland*,

If an Attorney be sued in a transitory action in any other County than Middlesex, the Court will on Motion before rules to plead out) alter ye venue to Middlesex. Ld: ante fo. 79.

An Attorney cant have Spetiall Bail where a Comon person Cant Have it unlefs it be for fees as a Minister of ye Court in wch. case it is said He may Hold to Bail for 40l. by Custom.
Qu. Q if this Custom is not taken away by. 12. G. 1. c. 29. to prevent friuilous & vexatious arrests.

An Attorney may lay his Action in Middlesex and the Venue Shall not be changed tho ye Cause of Action arise in and. County. vid. ante. fo. 79.

land, Defender of the Faith, and ſo forth; To the Sheriff of *Middleſex* Greeting: We command you that you attach *C. D. E. F. G. H.* (you may put in as many as you have Occaſion) if they may be found in your Bailiwick, and ſafely keep them, ſo that you may have their Bodies before us at *Weſtminſter*, on next after to anſwer *A. B.* Gentleman, being one of the Attornies in our Court before Us, according to the Liberties and Privileges for ſuch Attornies, from the Time whereof the Memory of Man is not to the contrary, uſed and approved in the ſame of a Plea of Treſpaſs; and that you have there then this Writ. Witneſs, &c.

If the Defendant is to be held to Bail, you add an *Acetiam* Bill in the ſame Manner as in a *Latitat.* vid: fo: 41.

You pay the Chief Clerk nothing for ſigning this Writ, but the Sealer takes 7 *d.* for the Seal.

If the Attorney delivers his Declaration 4 Days, excluſive before the End of the Term, the Defendant muſt plead as of that Term.

What Time a Perſon ſued by an Attorney has to plead.

An Attorney cannot have his Privilege but where he ſues or is ſued ſingly, and in his own Right, or on his own Account, and not where he ſues or is ſued jointly, or in *Auter Droit*, as Executor, &c.

Where Attornies cannot have Privilege.

If an Attorney delivers his Declaration 4 Days excluſive before the End of the Term in which the Attachment was re-

When to deliver his Declaration.

turnable, and enters a Rule to plead, and demands a Plea, the Defendant ſhall be obliged to plead as of that Term; and if he does not deliver his Declaration in that Time, the Defendant will have an Imparlance; and if he does not deliver his Declaration before the *Eſſoin*-Day of the ſubſequent Term, the Defendant will have an Imparlance to the Term next following.

Cannot bring Action till a Month after Bill delivered.

An Attorney ſhall not commence an Action for Fees, Charges or Diſburſements, until the Expiration of one Month or more after he ſhall have delivered to the Party to be charged therewith, or left for him at his Dwelling-Houſe, or laſt Place of Abode, a Bill of ſuch Fees, *&c.* written in common legible Hand in *Engliſh*, except Law Terms and Names of Writs) and in Words at length (except Times and Sums) ſubſcribed with his proper Hand. *Stat.* 2 *Geo.* 2.

Bill to be referred to be taxed.

And upon Application to the Lord Chancellor, *&c.* or unto a Judge, *&c.* of any of the ſaid Courts reſpectively, in which the Buſineſs or the greateſt Part in Value ſhall have been tranſacted, and Submiſſion of the Party to pay what upon Taxation ſhall appear due, the ſaid Bill ſhall be referred (though no Action commenced thereon) to be taxed without any Money being brought into Court; and if the Attorney ſhall refuſe or neglect to attend, the Officer may tax the Bill *ex parte*, (and pending ſuch Reference, no Action to be commenced for the ſaid Demand) and upon the Taxation, the Party ſhall forthwith

And what found due to be forthwith paid.

pay

It is said y.t y.e Stat. of Limitations cant be pleaded to an Attorneys bill, tho: it may be to a Sol.r

pay the ſaid Attorney the whole Sum found due thereon, or in Default thereof, ſhall be liable to an Attachment, a Proceſs of Contempt, or other Proceeding at the Election of the Attorney, as the Party was before liable unto; and if on the Taxation it ſhall be found that the Attorney has been over-paid, then the Attorney ſhall forthwith refund, and pay to the Party all ſuch Money as the Officer ſhall certify to have been ſo over-paid, or in Default thereof be liable to an Attachment or Proceſs of Contempt, or ſuch other Proceeding, at the Election of the Party, as he would have been in Caſe this Act had never been made; and the Court is to award the Coſts of the Taxation to be paid according to the Event thereof, that is to ſay, if the Bill taxed be leſs by a Sixth than the Bill delivered, the Attorney is to pay the Coſts. If it ſhall not be leſs, the Court to charge the Attorney or Client, according to the Reaſonableneſs or Unreaſonableneſs of the Bill. *Stat.* 2 *Geo.* 2. *For Regulation of Attornies, &c.*

Or liable to Attachment, &c.

If the Attorney be over-paid, to refund.

Or liable to Attachment, &c.

Coſts of Taxation.

If Bill taxed, leſs by a ſixth than Bill delivered, Attorney to pay Coſts.

If not, Attorney or Client, according to the Reaſonableneſs of the Bill.

Of Writs of Habeas Corpus *and* Certiorari, *and Proceedings thereon.*

WRITS of *Habeas Corpus* are of various Sorts, and for ſeveral Purpoſes, as where a Defendant is arreſted by the Sheriff, either on Meſne Proceſs or on an Execution,

Proceedings by Habeas Corpus.

he may, to avoid going to the County Gaol, or to get out if already in it, remove himſelf by *Habeas Corpus* into the *King's Bench* Priſon, and enjoy the Benefit of the Rules, which are very ſpacious and open, on giving Security to the Marſhal.

When returnable immediately, and when not.

A Writ of *Habeas Corpus* to remove the Body of a Priſoner, directed to the Sheriffs of *London* or *Middleſex*, the Judge of the *Marſhalſea* Court, or other inferior Court within five Miles of *London*, may be granted in Vacation or Term-Time, returnable immediately; but if the *Habeas Corpus* be directed to any other Sheriff or Court farther diſtant, it muſt be returnable at a certain Day in Court, unleſs it be to deliver over a Priſoner in Diſcharge of his Bail.

The Form of a Habeas Corpus cum Cauſa, *returnable before the Chief Juſtice immediately.*

Form of Habeas Corpus.

GEORGE the Second, by the Grace of God, King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, and ſo forth, To the Sheriff of *Middleſex* Greeting: We command you that you have the Body of *C. D.* detained in our Priſon under your Cuſtody, as it is ſaid, under ſafe and ſecure Conduct, together with the Day and Cauſe of his being taken and detained, by whatſoever Name he may be called in the ſame, before our Right Truſty and Well-beloved Sir *William Lee* Knight, our Chief Juſtice aſſigned

aſſigned to hold Pleas in our Court before Us, at his Chamber ſituate in *Serjeants Inn* in *Chancery Lane*, immediately after the Receipt of this Writ, to do and receive all and ſingular thoſe Things which our ſaid Chief Juſtice ſhall then and there conſider of him in this Behalf. Witneſs, *&c.*

You ingroſs this Writ upon a 5 *s.* Stamp, then write a *Fiat* in this Manner;

Middleſex. Let there be a *Habeas Corpus* for *C. D.* to Do and Receive, returnable immediately.

Of ſuing out a Habeas Corpus, *and getting it allowed.*

Then make a Note for the Office, and carry the Writ to the Signer of the Writs, who will ſign the Writ, and keep the Note and the *Fiat* for the Judge to Sign. You pay him 6 *s.* 8 *d.* in Term-Time, and 7 *s.* 8 *d.* in Vacation, which is thus divided; to the Chief Clerk 1 *s.* 8 *d.* the Judge 4 *s.* the Judge's Clerk in Term 1 *s.* in Vacation 2 *s.* Then get it Sealed, for which you pay 7 *d.* Then you lodge the Writ with the Sheriff in *Middleſex*. The Fees are, if the Defendant be charged but with one Action, 9 *s.* 4 *d. viz.* Allowing the Writ, 4 *s.* 8 *d.* for the Return, if with but one Action, 2 *s.* 4 *d.* for a Warrant to the Bailiff to carry the Priſoner before the Judge, 2 *s.* 4 *d.* If the Defendant is charged with more Actions than one, the Sheriff takes 2 *s.* 4 *d.* for each of them; and if the Defendant be in *Newgate*, then for a Warrant to the Keeper to deliver him to the Bailiff, 2 *s.* 4 *d.* more.

The Fees.

If

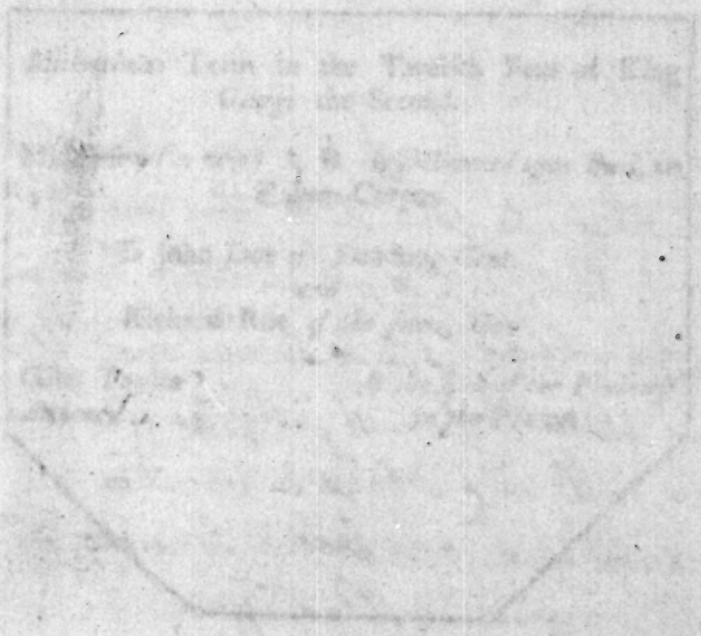
Defendant must be charged with some Proceſs of this Court, or cannot be committed.

If the Defendant is not charged in Cuſtody of the Sheriff with ſome Proceſs out of this Court, he cannot be turned over; and therefore in ſuch Caſe the Defendant muſt procure ſome Creditor to ſue out a Writ againſt him in this Court, and lodge it with the Sheriff before he brings his *Habeas Corpus*.

Fees on Commitment at the Judge's Chamber.

When the *Habeas Corpus* is returned by the Sheriff, the Bailiff brings the Defendant to the Judge's Chamber, who commits him to the *King's Bench* Priſon. You pay 10 *s.* to the Bailiff for bringing up the Defendant, 8 *s.* 6 *d.* at the Judge's Chamber, *viz.* 4 *s.* to the Judge's Clerk, 2 *s.* for the Chaplain of the Priſon, 1 *s.* for the Deputy Marſhal, 1 *s.* for the Clerk of the Papers of the Priſon, and 6 *d.* for the Porter of *Serjeants Inn*; and you pay 6 *s.* 8 *d.* to the Tipſtaff for carrying the Defendant over to the Priſon.

The



The Form of a Bail-Piece on a Habeas Corpus.

Michaelmas Term in the Twelfth Year of King *George* the Second.

Middleſex *(to wit)* A. B. *is Delivered upon Bail, on* Habeas Corpus.

To John Doe *of* London, *Gent.*
and
Richard Roe *of the ſame, Gent.*

Giles Taylor *Attorney.* } *At the Suit of the Plaintiff in the Plaint.*

Perſons committed to the Cuſtody of the Marſhal on Habeas Corpus, *to remain 2 Days notwithſtanding any other* Habeas Corpus.

Every Perſon committed to the Cuſtody of the Marſhal by Virtue of a *Habeas Corpus*, ſhall remain in actual Cuſtody of the Marſhal, by the Space of two Days next after ſuch Commitment, notwithſtanding any other *Habeas Corpus* from any other Court whatſoever. *Hil. 5 W. & M.*

As to the Stile of Inferior Courts.

If the *Habeas Corpus* be to remove a Cauſe out of an Inferior Court, you muſt learn the Stile of the Court, for which ſee *Theſaurus Brevium*. The Direction to the *Marſhalſea* Court is, "To the Judge of the "Court of our Palace at *Weſtminſter*, Greet-"ing". To the Court of the Sheriffs of *London*.

London. " To the Mayor, Aldermen and " Sheriffs of *London*, Greeting".

Cauſe not to be removed where the Cauſe of Action does not exceed five Pounds.

Where the Cauſe of Action in the Inferior Court did not amount to five Pounds or upwards, it was not removable by a *Habeas Corpus*, and therefore in ſuch Caſe the Defendant uſed to ſet up a fictitious Action againſt himſelf for a pretended Demand of 5 *l.* or upwards, and then bring a *Habeas Corpus* and remove both Cauſes together, and thereby remove the ſmalleſt Actions into the Superior Courts; for preventing which Abuſes, by *Stat.* 12 *Geo.* 1. the Judge of the Inferior Courts, mentioned in *Stat.* 21 *Ja.* 1. may proceed in ſuch Actions as are therein ſpecified, which appear or are laid not to exceed 5 *l.* although there be other Actions againſt the Defendant, wherein the Plaintiff's Demands ſhall exceed the ſaid Sum of 5 *l.*

Habeas Corpus *to remove a Cauſe, to be returnable a Day certain; Except.*

Writs of *Habeas Corpus* to remove Cauſes out of Inferior Courts, (except Courts within five Miles of *London*, as the Sheriff's Court in *London*, *Marſhalſea* Court, *&c.*) ſhall be made returnable at a certain Day in Term, and not immediately.

Of what Return ſuch Habeas Corpus *to be made returnable.*

And every ſuch Writ, that ſhall be ſued out in *Hilary* or *Trinity* Term, or the Beginning of the Vacation following, ſhall be made returnable on the firſt or ſecond Return of the ſubſequent Term, and if returnable in *Hilary* or *Trinity* Term, ought to be made returnable the firſt or ſecond Return of thoſe Terms; and if returnable later, any Judge of the Court may grant a *Procedendo*, as tending to the Plaintiff's Delay.

The

The Form of a Procedendo.

Procedendo.

GEORGE the Second, by the Grace of God, King of Great Britain, France and Ireland, Defender of the Faith, and so forth, To the Mayor, Aldermen and Sheriffs of London, Greeting. Although we lately by our Writ commanded you, that you should have the Body of C. D. detained in our Prison under your Custody, as it was said, under safe and secure Conduct, together with the Day and Cause of his being taken and detained by whatsoever Name the said C. D. might be called in the same, before our Right Trusty and Well-beloved Sir William Lee Knight, our Chief Justice assigned to hold Pleas in our Court before Us, at his Chambers [illegible] to certify [illegible] Proceedings [illegible] Receipt of [illegible] Court was retained to do and receive all and singular those Things which our said Chief Justice should then and there consider of him in that Behalf [illegible] Order as by our Writ aforesaid [illegible] you and every of you, That no Plaint or Suits against the said C. D. at the Suit of A. B. in our Court, before you or any of you levied or affirmed, or before you or any of you now depending undetermined, you proceed [illegible] Manner, according to the Law and Custom of our Kingdom of England, as you shall see proper

London. "To the Mayor, Aldermen and Sheriffs of London, Greeting."

"We have the Cause of Action in the Information of C. D. that he owes to the Plaintiff in the Sum of Ten Pounds or upwards, as we are informed by A. B. Gent. and therefore to him C. D. the Defendant did on [illegible] exhibit a fictitious Action of Debt upon Assumpsit for a pretended Demand of [illegible] pounds, and then being a Defendant in the said Action, he the said C. D. did thereby procure the Cause to be removed into the Superior Court of [illegible] for preventing which Abuse, by Stat. 21 Geo. 2. the Judge of the Inferior Court, [illegible] in the Stat. 21 Geo. 2. may proceed to Judgment as in such Cases [illegible] Plaintiff's Demand shall exceed the Sum of 5 l.

We therefore command you, that you cause the said C. D. if he shall be found within your Bailiwick, to be taken, and safely kept in your Custody, so that you have his Body before the Judges of our Court for London, Middlesex Court, [illegible] shall be made returnable at a certain Day in Term, and not immediately.

And every Day after that shall be fixed by the Plaintiff in Term, or by the Deputy [illegible] of the Warrant following, that the Writ be made returnable on the first or second Return of the Intergress Terms, and if returnable in Hilary or Trinity Term, ought to be made returnable [illegible] Bail or Special Bail in those Terms, and [illegible] any Judge of the Court may grant a Procedendo, according to the Plaintiff's Delay.

The

The Form of a Procedendo.

GEORGE the Second, by the Grace of God, King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, and ſo forth, To the Mayor, Aldermen and Sheriffs of *London*, Greeting: Although we lately by our Writ commanded you, that you ſhould have the Body of *C. D.* detained in our Priſon under your Cuſtody, as it was ſaid, under ſafe and ſecure Conduct, together with the Day and Cauſe of his being taken and detained, by whatſoever Name the ſaid *C. D.* might be called in the ſame, before our Right Truſty and Well-beloved Sir *William Lee* Knight, our Chief Juſtice aſſigned to hold Pleas in our Court before Us, at his Chambers ſituate in *Serjeants Inn* in *Chancery Lane*, immediately after the Receipt of that Writ [as the *Habeas Corpus* was returnable] to do and receive all and ſingular thoſe Things which our ſaid Chief Juſtice ſhould then and there conſider of him in that Behalf; yet we being now moved with certain Cauſes in our Court before Us, command you and every of you, That in all Plaints or Suits againſt the ſaid *C. D.* at the Suit of *A. B.* in our Court, before you or any of you levied or affirmed, or before you or any of you now depending undetermined, you proceed with what Speed you can in ſuch Manner, according to the Law and Cuſtom of our Kingdom of *England*, as you ſhall ſee proper

Procedendo.

proper, Our ſaid Writ to you thereupon firſt directed to the contrary in any Thing notwithſtanding. Witneſs, *&c.*

Special Bail in Cauſes removed by Habeas Corpus; *Except.*

Special Bail is required in all Caſes removed by *Habeas Corpus* out of Inferior Courts, except the Defendant be an Executor or Adminiſtrator, or the Action be for Words or ſmall Treſpaſſes. *Hil.* 2 *Ja.* 2.

Procedendo unleſs Bail in Term within 4 Days, and in Vacation within 6 Days after Notice.

Upon the Allowance of any *Habeas Corpus*, the Plaintiff may in Term-Time have a Rule for a *Procedendo*, unleſs good Bail be put in within 4 Days next after Notice of the Rule, and in Vacation may have a Rule or Warrant for a *Procedendo*, unleſs good Bail be put in within 6 Days next after Notice of ſuch Rule or Warrant.

No Bail on Habeas Corpus *till the Writ be returned.*

No Bail is to be tendered or put in upon any *Habeas Corpus*, until the *Habeas Corpus*, and Cauſes for which Bail is to be put in, be returned, to the End it may appear what the Cauſes are, for which the Defendant is detained, and Bail may be duly taken, and the *Habeas Corpus* and Bail duly filed. *Mich.* 1651, *Paſ.* 29 *Car.* 2. *Hil.* 10 *W.* 3.

Twenty-eight Days to except againſt Bail on Habeas Corpus.

When Special Bail is put in before any Judge of this Court *de bene eſſe*, upon a Writ of *Habeas Corpus*, if the Plaintiff ſhall not except againſt the Bail within twenty-eight Days after putting in the ſame, the Bail ſhall be filed within 4 Days next after the End of the ſaid twenty-eight Days. *Mich.* 16 *Car.* 2.

X unless one of ye Judges of this Court shall order to ye contrary

proper. Our Seal, Wits &c. you thereupon

Special Bail in Cases removed by Habeas Corpus out of Inferior Courts.

Special Bail is required in all Cases removed by *Habeas Corpus* out of Inferior

Procedendo until Bail put in, and in Term within 4 Days, and in Vacation in 8 Days after Notice

Upon the Allowance of any Habeas Corpus, the Plaintiff may in Term-Time have a Rule for a *Procedendo*, unless Bail be put in within 4 Days next after Notice of such Rule or Warrant.

No Bail to Habeas Corpus to alter Bail taken

No Bail to the Habeas Corpus shall alter the Bail taken

Plaintiff may proceed against Bail to Habeas Corpus.

Plaintiff may proceed against Bail to the *Habeas Corpus*, if the Plaintiff shall not proceed against the Bail within twenty-eight Days after putting in the same, the Bail shall be discharged, unless Declaration after the End of the said twenty-eight Days.

And

And the like Notice in Writing is to be given of putting in or excepting to Bail on a *Habeas Corpus* as on a *Cepi Corpus*. *ſ. 54. 2. 55.*

Notice of putting in or excepting to Bail to be in Writing.

And if the Plaintiff except to ſuch Bail put in *de bene eſſe*, he may have a Rule or Warrant for a *Procedendo*, unleſs the Defendant ſhall put in better Bail within 4 Days after Service of ſuch Rule or Warrant, whether it be in Term or Vacation.

After Exception, Rule for Procedendo *within 4 Days, unleſs better Bail, whether in Term or Vacation.*

If a Cauſe be removed by *Habeas Corpus* out of the *Marſhalſea* or any other Inferior Court, and the Bail there offer to be Bail to the Action here, the Plaintiff is compellable to take them, becauſe he might, but did not except to them below. *Aliter*, where a Cauſe comes hither out of *London*, for the Sufficiency of the Bail there, is at the Peril of the Clerk, and he is reſponſible to the Plaintiff, ſo that the Plaintiff had not the Liberty of excepting againſt them, and the Clerk is not reſponſible if they be deficient in this Court, though he was in *London*. 1 *Salk.* 97.

On a Removal out of an Inferior Juriſdiction, the Plaintiff is bound to accept the Bail below, except in London.

If one be brought into this Court by *Habeas Corpus*, and puts in Bail, the Bail are liable to all Actions at the Suit of the Plaintiff or Plaintiffs mentioned in the Return of the *Habeas Corpus*, wherein he or they ſhall declare againſt the Defendant at any Time within two Terms next after.

Bail liable to all Actions in the Return of the Habeas Corpus *declared on within two Terms.*

Defendant returned in Cuſtody on a *Habeas Corpus* or *Cepi Corpus*, is not to be diſcharged until the Bail is perfected.

Defendant in Cuſtody not to be diſcharged till Bail is perfected.

The

Record not removed by Habeas Corpus.

The Record itſelf is never removed by a *Habeas Corpus*, as it is on a *Certiorari*, but remains below, and therefore if a Cauſe be removed hither by *Habeas Corpus*, the Plaintiff here muſt begin *de Novo*, and declare againſt the Defendant as *in Cuſtodia Mareſcalli. Salk.* 352.

Plaintiff muſt declare de Novo.

Plaintiff muſt declare within two Terms.

The Plaintiff muſt declare before the End of the Second Term, after the Return of the *Habeas Corpus*, and the Defendant will not be bound to plead to any Declaration delivered after that Time.

Cannot be Non proſſed for want of a Declaration.

And where the Defendant has removed his Cauſe hither by *Habeas Corpus*, and put in Bail, he cannot have a *Non-Pros* againſt the Plaintiff for want of a Declaration, if he will not declare, the Plaintiff not being in Court, and the Cauſe ſuppoſed to be removed againſt his Inclination.

Cauſe removed from City, &c. where the Judges of Aſſize ſeldom go, to be laid in the County wherein the City lies.

If a Cauſe be removed by *Habeas Corpus* out of an Inferior Court, lying in any City or Town, where the Judges of Aſſize ſeldom go, as *Canterbury*, *Southampton*, *&c.* and the Action be Tranſitory, it ſhall be laid in the County wherein ſuch City or Town is, as *Kent*, *Southampton*, *&c.*

What Time the Defendant has to plead in Hilary *or* Trinity *Term, and the Action in* London *or* Middleſex.

If a Cauſe be removed out of *London* or *Middleſex*, the *Marſhalſea* or any other Court within five Miles of *London*, in *Hilary* or *Trinity* Term, and Bail is put in, and the Plaintiff declares in *London* or *Middleſex*, and delivers his Declaration ſix Days before the End of the Term, the Defendant ſhall plead 3 Days before the *Eſſoin*-Day of the ſubſequent Term, that the Plaintiff may

enter the Iſſue if he will; but if the Plaintiff does not deliver his Declaration ſix Days before the End of the Term, the Defendant ſhall have an Imparlance till the next Term.

What Time in theſe Terms, if Action in any other County.

If a Cauſe is removed out of any Court, except in *London* or *Middleſex*, the *Marſhalſea* or other Court within 5 Miles of *London*, and the Plaintiff does not declare in *London* or *Middleſex*, but in ſome other County, and the Plaintiff delivers his Declaration at any Time before the End of theſe Terms, *viz. Hilary* or *Trinity*, the Defendant is bound to plead by the Time the Rule is out, that the Plaintiff may try his Cauſe at the Aſſizes, if he thinks proper; and if the Defendant does not plead by that Time, Judgment may be entered againſt him.

What Time to plead in Michaelmas *or* Eaſter *Term.*

Upon a *Habeas Corpus* returnable in *Michaelmas* Term, if the Declaration be delivered before *Craſtinum Animarum*, in *Eaſter* Term if delivered before *Menſem Paſchæ*, and the Action is laid in *London* or *Middleſex*, the Defendant muſt plead to Trial the ſame Term. But if delivered after theſe reſpective Times, and yet ſix Days before the End of either of theſe Terms, the Defendant, wherever the Action is laid, ſhall plead to enter three Days before the *Eſſoin*-Day of the ſubſequent Term; and if not delivered ſix Days before the End of either of theſe Terms, the Defendant has an Imparlance until the next Term.

Salk. 515.

Practice various ſince Rule Trin. 5o 6 Geo. 2.

Since the making the Rule of *Trinity*, the 5th and 6th of his preſent Majeſty, the

Attornies have differed as to their Method of Proceeding, ſome adhering to the old Practice, and others following that Rule as on a *Cepi Corpus*.

Plea in Abatement when to be pleaded.

A Plea in Abatement on *Habeas Corpus*, muſt be pleaded before the Rule for Pleading is out.

How to proceed againſt a Priſoner in the Fleet, *charged with a Declaration, removing himſelf to the* King's Bench *Priſon. How on the like Removal from the* Marſhal *to the* Fleet.

If a Priſoner in the *Fleet*, charged with a Declaration of the *Common Pleas*, remove himſelf by *Habeas Corpus* to the Cuſtody of the Marſhal, the Plaintiff muſt proceed to Judgment in the Court of *Common Pleas*, and then may carry him back by *Habeas Corpus ad Satisficiendum* to charge him in Execution; and ſo if a Priſoner in the Cuſtody of the Marſhal, be charged with a Declaration in this Court, and he removes himſelf to the Fleet, the Plaintiff muſt proceed to Judgment in this Court, and the Defendant muſt be brought back by *Habeas Corpus* to be charged in Execution.

N. B. On ſuch *Habeas Corpus* the Plaintiff's Attorney muſt indorſe the Number of the Judgment Roll.

Of

To charge a prisoner in Custody.

In the Marshalsea prison — Prog. Mich. 14. Geo. 2. No Decl.ⁿ whereby any prisoner in ye Kings: Bench prison shall be charged in ye Custody of ye Marshal there of Shall be Sufficient Cause to detain him unless affid.ᵗ be made y^t Plts Cause of Action amounts to 10. or upwards, wch affid.ᵗ is to be filed with ye Clk of ye Rules & ye Sum Sworn to mentd by him in ye Declaration before ye Same be Dispt with & Turnkey

In Ludgate, Newgate or any other County Goal — Make out a Bailable proces with ye Sum Sworn to indorsd thereon & then get a Warr.ᵗ on it from ye Sheriff & leave it with ye Keeper. and proceed to declare as follows.

Has to deliver ye Decl.ⁿ — Declaration to be delivered to Prison.ᵈ (or Keeper Gaoler or Turnkey) before ye End of ye next Term after that in wch proces is returnable or Surrender in Discharge of Bail & If you Deliver ye Decl.ⁿ to ye Keeper Gaoler or Turnkey if Deft is not his prisoner or it may be delivered to Deft himself, NB a Bill to be first filed on Purchᵗ vide fo 182.

To file affidᵗ thereof — Make an affidᵗ of Delivering Decl.ⁿ agᵗ fol. 180. make a Copy of Such affidᵗ on double Ps peny, & annex it to a Copy of ye Decl.ⁿ on double peny — File ye origin.ˡ affidᵗ with Clerk of ye Rules within 20 days after ye End of next Term in wch proces is returnd. and he will give a Rule to plead, Then demand a plea in writing & for want thereof Sign Judgmᵗ.

rule to plead may be

NB. If Deft be in ye Marshalsea prison no Such affidᵗ is requisite, but a Rule to plead may be given of Course without Such affidᵗ.

when to appear and plead — If Copy of Decl.ⁿ be delivered before 3ᵈ return of Easter or Michas Term [on-whose proces returnd ye 1ˢᵗ day of Easter or Michas] affidᵗ of Such delivery being filed, & rules given, Prisonr to appear in 10 days after Easter or Michas Term, or Judgmᵗ may be Signed but if he appears he Shall imparl to ye next Term, unless Action be laid in London or Middx and Deft be in prison within ye Bills of London or Middx & then he Shall plead 2 days before ye 1ˢᵗ day of ye next Term and

If delivered on or after ye 3ᵈ return of Easter or Michas or any time in Hilary or Trinity & Deft appears 2 days before 1ˢᵗ day of next Term he Shall imparl to ye next Term, but if he does not appear in that time [affidᵗ of Such delivery having been filed & rules to appear & plead given] Judgmᵗ may be Signed 29 Car. 2. 5. 1 Lev: & 1 M. where Bail at large first.

And if proces be returnable in one Term & Decl.ⁿ delivered before ye 1ˢᵗ day of ye next Term, in Such next Term Plts may give rules to appear & plead, & if the prisonr does not appear & plead by ye Expiration of ye Rules Judgmᵗ may be Signd Ibid.ᵐ

in what time to Declare, get Judgmᵗ & Execution — Plts must deliver Issue and proceed to Judgmᵗ. & Issue wth in 3 Terms after Decl.ⁿ del. or after render if Decl.ⁿ delivered before); Lead to Execution 2 terms after Judgmᵗ a prisonr to be discharged

Of Proceedings againſt PRISONERS.

Antient Practice.

FOrmerly when any Defendant was detained in Cuſtody by *Meſne* Proceſs of this Court for want of Bail, if the Plaintiff did not within two Terms cauſe the Defendant to be brought up by *Habeas Corpus* and committed; ſo that he might declare againſt him *in Cuſtodia Mareſcalli*, the Defendant might be diſcharged out of Cuſtody upon Common Bail or Appearance.

Stat. 4, 5. W. & M. c. 21. *For delivering Declarations againſt Priſoners.*

But by Statute 4 & 5 *William* and *Mary* c. 21. If any Defendant be taken and charged in Cuſtody at the Suit of any Perſon, upon any Writ or Writs out of any of the Courts at *Weſtminſter*, and impriſoned for want of Sureties for his Appearance, the Plaintiff in ſuch Writ may, before the End of the next Term after ſuch Writ ſhall be returnable, declare againſt ſuch Priſoner in the Court out of which the Writ or Writs ſhall Iſſue; whereupon ſuch Priſoner ſhall be taken and charged in Cuſtody; and may cauſe a true Copy thereof to be delivered to ſuch Priſoner, or to the Gaoler or Keeper of the Priſon, or Gaoler in whoſe Cuſtody ſuch Priſoner ſhall be and remain; to which Declaration the ſaid Priſoner ſhall appear and plead; but if he ſhall not appear and plead thereto, the Plaintiff ſhall in ſuch Caſe have

vid. fo: 178.

Judgment, as if the Priſoner had appeared and refuſed to plead.

To be alledged in the Declaration, in whoſe Cuſtody ſuch Priſoner is.

That in all ſuch Declarations againſt ſuch Priſoners, it ſhall be alledged in the Cuſtody of what Sheriff, Bailiff or Steward of any Franchiſe, or other Perſon having Return and Execution of Writs, ſuch Priſoner ſhall be at the Time of ſuch Declaration, which Allegation ſhall be as good and effectual, as if ſuch Priſoner was in the Cuſtody of the Marſhal of the *Marſhalſea*.

Rule of Court made Paſ. 5. W. & M.

Upon this Act the Judges of the Court of *King's Bench* made the following Rule of Court. *Paſ. 5 W. & M.*

Declaration not to be delivered before Return of Proceſs.

Firſt, That no Copy of a Declaration be delivered to any Priſoner in Cuſtody, before the Day of the Return of the Proceſs upon which the Defendant was taken or charged in Cuſtody.

No Rule to appear and plead till Affidavit made and filed of delivering the Declaration, &c.

Secondly, That no Rule be given for the Defendant in Cuſtody to appear, and plead to any Declaration againſt him, until an Affidavit be filed with the Clerk of the Rules of the delivering a Copy of ſuch Declaration, and of the Time when, and the Perſon to whom the ſaid Copy was delivered, and that the Defendant was arreſted or charged in Cuſtody by Proceſs out of this Court returnable before the Delivery of ſuch Copy; and that the Time of filing the Affidavit be entered upon the Affidavit by the Clerk of the Rules; and that a Copy of ſuch Affidavit be produced to the *Prothonotary* or Secondary, before the ſigning the Judgment.

Copy of Affidavit to be produced before ſigning Judgment.

Thirdly,

Form of a Declaration in B.R. ag.t a prisond. in a County Goal. on Bond

Somersetshire (to wit) Ann Tott. widow complains of J.C. in Custody of the Sheriff of this County &c. by virtue of a writ of our said Lord the King called a Latitat issued out of the Court of our said Lord the King before the King himself ag.t the said John at the Suit of the said Joan and directed to the Sheriff of the County &c. in a Plea that he render [&c. as in others]

J.o Doe
S. For the Plt. } Pledges of Prosecuting &c. and
The Defr. in Custody

Affid.t of the Delivery of a Declar.n to a prisond.

In the Kings Bench

Bet. A.B. Plt
C.D. Defr

E.F. of &c. maketh oath that this Defr. did on the ... day of &c. deliver unto the Keeper or Gaoler a Turnkey of the County Goal of &c. a true Copy of the Decl.n hereunto annexed & the said Keeper or Gaoler a Turnkey then acknowledged the said Defr. to be a prisoner in the said Goal and this Dept. saith the said Defr. was arrested or charged in Custody by virtue of a Latitat appearing to this Dept. to be issued out of this Court returnable before the Delivery of the said Decl.n

Thirdly, If a Copy of the Declaration be delivered againſt ſuch Defendant before *Menſem Paſchæ* or *Craſtinum Animarum*, and Affidavit be made thereof and filed, and the Defendant doth not appear before the End of ten Days after *Eaſter* and *Michaelmas* Term reſpectively, Judgment may be entered againſt him, if Rules have been given; but if he doth appear before the End of ten Days after the Term, he ſhall imparle until the next Term (unleſs the Action be in *London* or *Middleſex*) and the Defendant be in Priſon within forty Miles of *London* or *Weſtminſter*, then though he doth appear before the Expiration of ten Days after the End of the Term, he ſhall plead two Days before the Eſſoin-Day of the next Term; and in Default thereof (Rules for Pleading having been given) Judgment may be entered againſt him as aforeſaid.

Declaration delivered before Menſem Paſch. *or* Craſt. Animar. *Defendant to appear in* 10 *Days after Term; otherwiſe Judgment. If he does appear, may imparl till next Term; Except in* London *or* Middleſex; *and Priſoner within* 40 *Miles of* London; *Then to plead* 2 *Days before Eſſoin-Day of next Term.*

Fourthly, If a Copy of the Declaration be delivered againſt ſuch Defendant on or after *Menſem Paſchæ* in *Eaſter* Term, or *Craſtinum Animarum* in *Michaelmas* Term, or in *Hilary* or *Trinity* Term, and thereupon the Plaintiff gives Rules to appear and anſwer, then if the Defendant appear two Days before the Eſſoin-Day of the next Term, he ſhall imparle until the ſaid next Term; but if he doth not appear within that Time, Judgment ſhall be given againſt him.

If Declaration delivered after Menſ. Paſ. *or* Craſt. Animar. *or in* Hilary *or* Trinity *Term, if Defendant appears two Days before Eſſoin-Day of next Term, he imparles to next Term.*

If Declaration delivered before Eſſoin-Day of the next Term after the Return of the Writ, Plaintiff may give Rules the next Term, and Defendant muſt appear and plead before Expiration thereof.

Fifthly, If a Writ be returnable in any Term, and a Copy of the Declaration has been delivered before the Eſſoin-Day of the next Term, the Plaintiff in ſuch next Term may give Rules to appear and anſwer; and if the Defendant does not appear and plead upon the Expiration of the Rules, Judgment ſhall be given againſt him.

If Declaration not filed before the End of the Term next after Return of the Writ and Affidavit, &c. Defendant to be diſcharged on Common Bail.

Sixthly, If the Declaration be not filed before the End of the next Term after the Writ or Proceſs, by which the Priſoner was taken or charged in Cuſtody, is returnable, and Affidavit made and filed in Manner as aforeſaid, before the End of twenty Days next after ſuch Term, the Priſoner ſhall be diſcharged by Common Bail, ſigned by one of the Juſtices of this Court.

Attachment againſt Gaoler concealing Declaration.

Seventhly, If any Gaoler or Keeper of a Priſon, having received a Copy of a Declaration againſt any Priſoner in his Cuſtody, ſhall ſuppreſs the ſame, and not deliver it forthwith unto ſuch Priſoner, an Attachment ſhall be iſſued againſt him.

Bill to be filed before Copy delivered.

Note; A Bill or Declaration in Parchment ought to be filed in the Office of the Clerk of the Declarations before a Copy of it be delivered to the Priſoner.

When Priſoner in Cuſtody of the Marſhal is to plead.

When a Bill is filed againſt a Priſoner in Cuſtody of the Marſhal, if a Copy of it be delivered for him to the Turnkey four Days excluſive before the End of the Term, a Rule to plead be given and a Plea demand-

ed,

ed, which may be done on the back of the Copy when delivered, the Defendant ſhall plead as of that Term; but if the Bill be not filed, and the Copy delivered four Days excluſive before the End of the Term, the Defendant may imparle until the next Term.

No Affidavit of delivering Copy of Declaration.

No Affidavit is required of the Delivery of ſuch Copy, as is where the Defendant is in Cuſtody of a Sheriff.

Plaintiff not declaring in two Terms, Defendant may be diſcharged on Common Bail without Notice.

If any Defendant ſhall be committed to the Cuſtody of the Marſhal of this Court, or ſhall be charged in Cuſtody of the Marſhal, or arreſted, or committed by Virtue of any Proceſs of this Court to the Cuſtody of any Sheriff or other Officer whatſoever, at the Suit of any Plaintiff, and ſhall ſo remain in Cuſtody by two Terms, and the Plaintiff ſhall not declare againſt ſuch Defendant within that Time, ſuch Defendant after the End of the ſecond Term after ſuch Impriſonment ſhall be diſcharged out of the Priſon where he ſhall be ſo detained, upon filing Common Bail, ſigned by one of the Juſtices of this Court, without any Notice to be given to the Plaintiff or his Attorney. *Trin.* 2 *Geo.* 1.

The Term in which the Proceſs is returnable to be accounted one of the Terms.

The Term in which the Writ, whereon the Defendant was arreſted, is returnable, although not returnable until the laſt Day of the Term, is to be accounted as one of the two Terms, as is alſo the Term wherein the Defendant was committed to the Cuſtody of the Marſhal, although not committed till the laſt Day of a Vacation.

How to diſcharge a Priſoner for want of Declaration.

To diſcharge a Priſoner on this Rule, you muſt obtain a Certificate from the Clerk of the Declarations, that no Bill is filed in his Office againſt the Defendant, and a Certificate of the Cauſes wherewith he ſtands charged, from the Clerk of the Papers of the *King's Bench* Priſon, if in Cuſtody of the Marſhal, and from the Gaoler or Keeper of the Priſon, if in Cuſtody of the Sheriff or other Officer. And Notice is required to be given to the Plaintiff, and an Affidavit muſt be made thereof, if the Plaintiff or his Attorney does not attend to oppoſe or conſent to his Diſcharge. *

Defendant to be diſcharged for want of proceeding to Trial or Judgment in three Terms after Declaration.

If a Plaintiff ſhall declare againſt a Defendant remaining Priſoner, as aforeſaid, in the Cuſtody of the Marſhal of this Court, or any Sheriff or other Officer, and ſhall not proceed to (actual) Trial, or obtain Judgment within three Terms next after the delivering ſuch Declaration (the Term in which the Declaration ſhall be delivered being one) ſuch Defendant ſhall be diſcharged out of Cuſtody on filing Common Bail, Notice being firſt given to the Plaintiff or his Attorney, and an Affidavit thereof made, if the Plaintiff or his Attorney does not attend, and ſhew Cauſe againſt the Diſcharge. *Trin.* 2 *Geo.* 1.

May be diſcharged if not charged in Execution in 2 Terms after Judgment.

If any Plaintiff ſhall obtain Judgment againſt any Defendant Priſoner, and ſhall not charge ſuch Defendant ſo remaining in Priſon in Execution upon the Judgment ſo obtained within two Terms next obtaining

ſuch

* when you have got these Certificates Summons & Plts before a Judge to Show Cause why Deft shd be discharged for & Plts not declaring &c. (Copy) & mail an affid.t of & Service thereof. Then get a Common Bail piece with a Fiat wrote thereon for & Judge to Sign, & when & Judge has Signed it make out a Supersedeas yourself & file & Comon Bail piece

NB. if a Deft be prison.t in & Marshalsea prison then get a Certificate from & Clerk of & papers of & Kings Bench and a Certificate from & CR of & Declaration & thereupon a Judge will order Comon Bail to be filed & on a Certificate thereof & Marshal will discharge Deft without a Supersedeas & if for want of proceeding to Judgm.t
2. if one Certificate must not be from & CR of Judgm.t & if for want of Declaration
2. if one Certificate must not be from & Keeper of & Marshalsea prison

ſuch Judgment (the Term wherein Judgment ſhall be obtained to be reckoned as one) the Defendant may obtain his Diſcharge in like Manner, as for not proceeding to Trial or Judgment. See *Trin.* 2 *Geo.* 1.

What Notice to Plaintiff on diſcharging a Priſoner.

In diſcharging a Priſoner in either of theſe Caſes, the Notice to be given the Plaintiff is a Judge's Summons to attend, and ſhew Cauſe why the Defendant ſhould not be diſcharged for the Plaintiff's not declaring, or not proceeding, as the Caſe is.

How to diſcharge him out of the Cuſtody of the Marſhal.

If the Priſoner be in Cuſtody of the Marſhal, he muſt get a Certificate from the Clerk of the Common Bails, that Common Bail was filed with him, by Order of one of the Judges, on which the Marſhal will diſcharge him without a *Superſedeas*.

How out of the Cuſtody of a Sheriff.

But if the Priſoner be in Cuſtody of a Sheriff or other Officer, he muſt ſue a Writ of *Superſedeas*, for ſigning which the Bail-Piece ſigned by one of the Judges is a Warrant to the Officer with whom you leave it, and he delivers it over to the Clerk of the Common Bails to be filed.

Defendant after Judgment ſurrendering in Diſcharge of Bail, to be charged in Execution in two Terms; Except Writ of Error or Injunction.

If a Defendant ſurrenders himſelf after Judgment in Diſcharge of his Bail, the Plaintiff muſt charge him in Execution in two Terms following (the Term in which he ſurrenders being one) or he ſhall be diſcharged upon Common Bail, as if in Cuſtody for want of Bail upon an Action, unleſs Proceedings be ſtayed by Writ of Error or Injunction.

If

Priſoner on Criminal Account not to be charged with Civil Action.

If a Man be in Cuſtody on any Criminal Matter, he cannot be charged at the Suit of a Subject in any Action without Leave of the Court. *Salk.* 354.

Priſoner on Meſne Proceſs taken on Eſcape Warrant muſt be declared againſt in two Terms.

If any Defendant being in the Cuſtody of the Marſhal of this Court upon *Meſne* Proceſs, ſhall be taken and detained in the Cuſtody of any Sheriff on an Eſcape Warrant for Eſcaping out of the Marſhal's Cuſtody, the Plaintiff in ſuch Action ſhall declare againſt the Defendant in Cuſtody of ſuch Sheriff, before the End of the ſecond Term after his being ſo taken; otherwiſe the Defendant may be diſcharged by *Superſedeas*. *Trin.* 6 *Annæ*.

How to charge a priſoner in Execution

In the Kings Bench priſon

Get a Rule from Mr Munday of 8 of ye Rules pay 4^s Serve ye marſhal with a Copy, under which he will write his acknowledgm^t. of Defd^t. lying in his Cuſtody for wch he is p^d. 10:6. Enter ye Commitment in ye Marſhals Book at Mr Lantrow's office 2^s. file it wth Mr — Hawley. 2^s.

Proceed-

In Newgate or any other Counties Goal

After final Judgm^t. Signed &c. and Coſts taxed make out a Ca. Sa. directed to ye Sheriff in whoſe Cuſtody Defd^t. is endorſed ye real Sum due for Debt & Coſts. Get a Warr^t. thereon, leave ye warr^t. with ye Keeper of ye priſon.

Proceedings on Scire Facias against Bail, and to revive Judgments, &c.

Proceedings on Scire Facias *againſt Bail, and to revive Judgments,* &c. *vid fo: 149. Title Execution*

NO *Scire Facias* lies againſt the Bail, (except in Error) until a *Non eſt Inventus* be returned upon a *Capias ad Satisfaciendum* againſt the Principal, and the Writ be filed. *Lutw.* 1273. *1 Rol. Abr: 333*

No Sci. Fa. *againſt Bail until a* Ca. Sa. *returned and filed.*

The Reaſon the Bail not bound to render the Principal till they know what Execution the Plaintiff will chuſe, whether he will chuſe to have his Body; which he makes appear by ſuing a *Capias*; for he might have ſued an *Elegit*, or *Fi. Fa.*

The Reaſon Bail not bound to ſurrender before Ca. Sa.

If there be no *Ca. Sa.* ſued out, returned and filed, the Bail may plead it, and be diſcharged; but the Court will not quaſh the *Scire Facias* on Motion.

If no Ca. Sa. *Bail may plead it, and be diſcharged.*

If a Defendant gives Judgment with Stay of Execution, until a future Day, the Plaintiff may notwithſtanding ſue forth a *Ca. Sa.* or *Fi. Fa.* directed to the Sheriff of the County where the Action is laid, and returnable before that Day, in order to make out a *Teſtatum* againſt the Defendant; but no ſuch *Ca. Sa.* ſhall be ſued forth to Warrant a *Scire Facias* againſt the Bail, unleſs by

Judgment with Stay of Execution, tho' Ca. Sa. *may be ſued out to warrant a* Teſtatum, *yet it may not to warrant a* Sci. Fa. *againſt the Bail.*

by Special Agreement, becauſe it is to the Prejudice of a third Perſon.

Ca. Sa. to lie four Days in the Sheriff's Office.

A *Capias ad Satisfaciendum* againſt the Principal, in order to charge the Bail, muſt lie four Days excluſive in the Sheriff's Office. *Salk.* 599.

To have eight Days between Teſte and Return.

There ought to be eight Days between the Teſte and Return of the *Capias ad Satisfaciendum* againſt the Principal. *Salk.* 602.

Defendant dying before Return of Ca. Sa. *Bail diſcharged.*

If the Defendant dies after *Capias*, and before the Return of it, the Bail is diſcharged, *per Jones* 1 *Jo.* 136. but muſt plead it. 1 *Rol. Abrid.* 336

Recognizance forfeited on Return of Non eſt Inventus *on* Ca. Sa.

Upon a *Non eſt Inventus* returned upon the *Ca. Sa.* the Recognizance is forfeited, becauſe there was a Default in the Party; and though it is uſual to render the Body upon the *Scire Facias*, yet that is of Grace, not of Neceſſity; and the Death of the Principal at the Time of the *Scire Facias* brought is not material, if he were alive when the *Ca. Sa.* was returned. *Cro. Jac.* 165. *pl.* 2.

Death of Principal at Time of Sci. Fa. *brought not available.*

Principal dying after Ca. Sa. *returned, and before filed, Court ſtayed the filing it.*

But where the Principal has died after a *Capias ad Satisfaciendum* returned, and before it was filed, the Court on Motion ſtayed the filing of it in Favour of the Bail.

How Recognizance to be entered on the Roll.

Before you make out a *Scire Facias* againſt the Bail, ſee that the Declaration be entered upon the Rolls at *Weſtminſter* of the ſame Term the Declaration was of, with an *Adhuc de Termino*, *&c.* And after the Declaration is entered *verbatim*, you enter this

× But if a Bail dyes after ye Cap: is returned & filed altho' before any Sc. ffa. Sued out ag^t ye Bail, yet ye Bail is not discharged 1 Roll's Abridg. 336

If ye Princip^ll Surrenders himself after ye Ca. Sa. ag^t him is returned non est inuent. & filed; The Bail is discharged. 1 Roll. Abrid. 333

And also ye Bail is discharged if ye Princip^ll Surrenders himself after ye return of ye Ca. Sa. as above, & after ye 1st Sci. ffa. is Sued out ag^t ye bail, so it be before the return of the 1st Sci. ffa.. Ibid^m

The Same as to Bail in a Writ of Error. Ibid^m.

But if ye Ca: Sa. is returned non est inuent. & a Sci. ffa. awarded ag^t ye Bail & returned & filed ye Bail is chargable if ye princip^ll is not brot in before that time Ibid. 334

Defendant's Appearance, and the Recognizance after it, thus:

And the ſaid *C. D.* by *R. R.* his Attorney, comes and defends the Force and Injury, when, and ſo forth.

And thereupon *E. F. G. H.* (naming the Bail with their Additions) come into the Court of our Lord the King, before the King himſelf, at *Weſtminſter*, in their proper Perſons, and became Pledges and Manucaptors, and each of them became Pledge and Manucaptor for the ſaid Defendant, that if it ſhould happen that the ſaid Defendant ſhould be condemned in the Plea aforeſaid, then the ſaid Manucaptors granted, and each of them did grant, that as well the ſaid Debt, as all ſuch Damages as ſhould be adjudged to the ſaid Plaintiff in that Behalf, ſhould be made of their and each of their Lands and Chattels, and to be levied to the Uſe of the ſaid Plaintiff, if it ſhould happen that the ſaid Defendant ſhould not pay the ſaid Debt and Damages to the ſaid Plaintiff, or render himſelf on that Occaſion to the Priſon of the Marſhal of the *Marſhalſea* of our Lord the King, before the King himſelf. *Entry of Recognizance.* *Condition of it.*

On a Recognizance in the Court of *King's Bench*, the Action or *Scire Facias* muſt always be brought in *Middleſex*. *Salk.* 564. *In what County Sci. Fa. againſt Bail ſhould iſſue.*

On a Recognizance taken in the *King's Bench* the *Scire Facias* muſt be brought in *Middleſex*; for the Recognizances there are not Obligatory by the Caption, but by their being

being entered of Record in the Court; otherwiſe in the Common Pleas. *Salk.* 600. 659.

On Recognizance taken by Commiſſioner.

If Bail be taken by a Commiſſioner in the Country, the *Scire Facias* may be ſued out into *Middleſex*, or the County where taken. *Lutw.* 1287. But in Caſe of a Recognizance entered into by Bail, on a Writ of Error, if it be entered to be taken at a Judge's Chambers in *London*, the *Scire Facias* muſt be ſued into *London*.

On Recognizance on a Writ of Error.

How Sci. Fa. *againſt Bail on Writ of Error to be returnable.*

If a *Scire Facias* be brought againſt Bail upon a Recognizance on a Writ of Error generally, without expreſſing the Action or the Condition of the Recognizance, there the *Scire Facias* muſt be returnable on a general Return *Ubicunque*; but if the Action and the Condition of the Recognizance be ſet forth in the *Scire Facias*, and it appears to be by Bill, then the *Scire Facias* muſt be returnable at a Day certain in Court. *Lilly's Practical Reg.* 2 Vol. 499.

By Original 15 *Days between Teſte and Return of each* Sci. Fa.

Every *Scire Facias* by Original ought to have fifteen Days incluſive between the Teſte and the Return, unleſs diſpenſed with by Act of Parliament.

By Bill 15 *Days between Teſte of firſt and Return of laſt* Sci. Fa.

If the Proceedings are by Bill, fifteen Days incluſive between the Teſte of the firſt *Scire Facias* and the Return of the laſt are ſufficient. *Salk.* 599.

Each *Scire Facias* ſhould have ſeven Days between the Teſte and Return, and not the one ten or eleven, and the other four or five.

But in this Caſe by Bill, if one *Scire Facias* only iſſue, and a *Scire Feci* be returned, the Time between the Teſte and Return of the *Scire Facias* is not ſettled to any certain Number of Days, but muſt lie four Days excluſive in the Sheriff's Office before the Return.

But if one Sci. Fa. *only iſſue, no Time limited between Teſte and Return.*

Upon the Iſſuing of any Writ of *Scire Facias* upon any Cauſe here in Court, no Writ of *Alias Scire Facias* ſhall iſſue thereupon, until the firſt Writ is returnable; and if any Writ of *Alias Scire Facias* ſhall iſſue to the contrary, then ſuch Writ of *Alias Scire Facias* ſhall be void. *Trin.* 8 *W.* 3. *Salk* 599. 6 *Mod.* 86.

No Alias Sci. Fa. *to iſſue forth until the firſt ſhall be returnable.*

Every Writ of *Alias Scire Facias* ſhould bear Teſte the Day of the Return of the firſt, *Salk.* 599. unleſs it be a *Scire Facias quare Executionem non* on a Writ of Error; in which Caſe it has been held not to be neceſſary.

Alias Sci. Fa. *to bear Teſte the Day of the Return of the firſt; Except.*

The Form of a Scire Facias *againſt Bail.*

GEORGE the Second, by the Grace of God, King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, and ſo forth, To the Sheriff of *Middleſex*, Greeting: Whereas *A. B.* lately in our Court, before us at *Weſtminſter*, by Bill without our Writ, and by the Judgment of the ſame Court, recovered againſt *C. D.* (add his Addition and the *Alias Dict*, if any) one hundred

Sci. Fa. *againſt Bail by Bill in Debt.*

In Debt.

hundred Pounds of Debt, and alſo ſeven Pounds ten Shillings for his Damages, which he ſuſtained as well by Occaſion of the detaining that Debt, as for his Coſts and Charges by him about his Suit in that Behalf expended; whereof the ſaid *C. D.* was convicted, as appears to Us from the Record; and although Judgment be thereupon given, yet Execution of the ſaid Debt and Damages ſtill remains to be made to him: And whereas *E. F.* and *G. H.* (naming the Bail with their Additions) heretofore, *to wit*, of the Term of Saint *Michael* in the fourth Year of our Reign, in our ſaid Court before us at *Weſtminſter* came perſonally, and became Pledges and Bail, and each of them by himſelf became Pledge and Bail for the ſaid *C. D.* That if it ſhould happen the ſaid *C. D.* ſhould be condemned in the Plea aforeſaid, then they the ſaid Bail granted, and each of them for himſelf did grant, that as well the ſaid Debt, as all ſuch Damages, Coſts and Charges as ſhould be adjudged to the ſaid *A. B.* in that Behalf, ſhould be made of their and each of their Lands and Chattels, and to be levied to the Uſe of the ſaid *A. B.* if it ſhould happen that the ſaid *C. D.* ſhould not pay the ſaid Debt and Damages, Coſts and Charges to the ſaid *A. B.* or ſhould not render himſelf on that Occaſion to the Priſon of the Marſhal of our *Marſhalſea* before us: Nevertheleſs, the ſaid *C. D.* has not as yet paid to the ſaid *A. B.* the ſaid Debt and Damages, Coſts and Charges, nor ſurrendered himſelf to

after ye Decl^n. is filed or delivered. Rules to plead must be given with ye Clerk of ye Rules wiz^t. now M^r. Munday by writing a Note as follows & pay^g him 1^s 4^d. vizt.

J: B. ag^t. G. G.

rule to Plead

10 Febry 1740 J. attorny for ye Plts

wch Note you leave wth ye Cl^k of ye Rules & He enters it in his Book of Rules to plead wth y^t time wch they are out, to wch book every body is at liberty to resort

Note if you give a rule to plead in one Term & take ye rule out, & you neglect to Sign Judgm^t till ye next term, you must give a fresh rule to plead as of ye term in wch you Sign Judgm^t. as for example

If a writ is returd on such a return, as if Plts Decl^n deliver'd his Decl^n. in due time to ye Deft is intitled to an Imparlance to ye next term; & whilst you file a Decl^n. 4 days before ye End of Hill / Deft being intitled to an Imparlance to 4 days in Eastr term / & you give rules to plead at ye same time, your rule to plead will be out ye last day of Hill & Deft is not obliged to Plead till 4 days in Easter, In that case you must give a fresh rule in Easter term wch must be out before you can Sign Judgm^t. or it will be irregular

Discontinuance

[illegible] afterwards (to wit) on [illegible] in the [illegible] year of the reign of our [illegible] before our said Lord the King at Westminster came the s^d. J: B. by his said attorney as the said p: W. by his said attorney [illegible] and the said p: W. did not from thence forth prosecute his said Bill with effect ag^t. ye s^d. J: but voluntarily permitted his said Suit to be discontinued: Therefore it is [illegible] (to wit) that on ye same day by ye discretion of ye Justices of the s^d Lord ye King here before the King himself came as well the s^d said (Deft) for his Costs & charges by him about [illegible] in & about his defence herein sustained in this behalf according to ye form of ye Statute in this case lately made and provided &c and ye said

2 Affid.t to Change of venue.

In the Kings Bench Hilt a. b. pltf
c. & d. defts

C. D. of &c. defts Dept in this Cause maketh oath that the Cause of Action mene.d in the Writ & Decl.n delivered in this Cause (if any such Cause there be) did arise in the County of N. & not in the City of L. nor elsewhere out of the Jurisdiction of the Court of K.

to the Priſon of the Marſhal of our *Marſhalſea* before us; as we have underſtood from the Information of the ſaid *A. B.* in our Court, before us; whereupon the ſaid *A. B.* hath humbly intreated us, that he may have a proper Remedy in this Caſe; and we being willing that what is Juſt ſhould be done on this Occaſion, Command you that by good and lawful Men of your Bailiwick you make known to the ſaid *E. T.* and *G. H.* that they be before us at *Weſtminſter*, on next after to ſhew if any Thing they have or know to ſay for themſelves, why the ſaid *A. B.* ought not to have his Execution againſt them, according to the Force, Form and Effect of the ſaid Recognizance, if it ſhall ſeem expedient, and ſo forth; and further to do and receive all and ſingular thoſe Things which our ſaid Court before us ſhall then and there Conſider of them in this Behalf; and that you have there then the Names of thoſe by whom you ſhall make known to them, and this Writ. Witneſs, *&c.*

Ventris.

If your Judgment be in Caſe on Promiſe, the Recital of it in the *Scire Facias* muſt be thus; "Recovered againſt *C. D.* one "hundred Pounds for his Damages which he "ſuſtained, as well by Occaſion of the not "performing certain Promiſes and Under-"takings lately made by the ſaid *C. D.* to the "ſaid *A. B.* as for his Coſts and Charges *In Caſe.*

" by him about his Suit in that Behalf ex-
" pended, *&c.*" And the reſt of the *Scire Facias* muſt be agreeable by omitting the Word *Debt* throughout.

In Treſpaſs. If in Treſpaſs, ſay, " Recovered againſt " *C. D.* one hundred Pounds for his Da-
" mages which he ſuſtained, as well by
" Means of a certain Treſpaſs lately done
" by the ſaid *C. D.* to the ſaid *A. B.* as
" for his Coſts, *&c.*"

Sci. Fa. *by Original made out by Filacer.* *Scire Facias's* by Original are made out by the Filacer of the County.

Alias Sci. Fa. The *Alias Scire Facias* differs from the firſt in nothing, except the Teſte and Return, and by adding after the Words, Command you, theſe Words, *viz.* As we have heretofore commanded you.

You make out a Note or Precipe for the Office, and pay the Signer of the Writs 1 *s.* 8 *d.* for ſigning this Writ, and the Sealer 7 *d.* for ſealing it.

How Sci. Fa. *ought to bear Teſte.* The firſt *Scire Facias* againſt Bail ought to bear Teſte the Day of the Return of the *Ca. Sa.** and the ſecond *Scire Facias* the Day of the Return of the firſt.

Firſt Sci. Fa. *if* Nihil, *to be left ſometime before the Return.* Every Writ of *Scire Facias*, whereon a *Nichil* is returned, ought to be delivered to the Sheriff, or left in his Office ſometime before the Return. *Eaſter* 5 *Geo.* 2.

Second to be left 4 *Days excluſive before its Return.* And every ſecond, or *Alias Scire Facias*, ought to be delivered to the Sheriff or left in his Office four Days excluſive before it's Return. Same Rule.

And

* Note a Ca. Sa. must be sued out ag.t y.e Princip.l before you bring a Sci. ffac. ag.t y.e Bail, or it is Error. 1 Roll's abridg. 333. Title Bail

And every *Scire Facias*, whereon the Defendant is ſummoned, and a *Scire Feci* is returned, ought to be delivered to the Sheriff, or left in his Office, four Days excluſive before the Day of the Return. Same Rule.

Sci. Fa. if Sci. Feci returned, to be left four Days excluſive before the Return.

But no Time is preſcribed for warning the Defendant before the Return of the Writ: If he is ſummoned the Day before, or even on the Day of the Return, it is ſufficient.

No Time fixed for warning Defendant.

The Sheriff ought to indorſe on every *Scire Facias* the Day of the Month and Year on which it is delivered to him, or left in his Office. *Eaſter* Term 5 *Geo.* 2.

Time when Sci. Fa. left to be indorſed by Sheriff.

At the Return of the ſecond Writ of *Scire Facias* (or of the firſt, if a *Scire Feci* be returned) you muſt give a Rule with the Clerk of the Rules for the Defendant, or Bail, as the Caſe is, to appear, and then award the *Scire Facias* on the Roll.

Rule to be given on a Sci. Feci or two Nihils.

Entry on the Roll of two Scire Facias's *againſt Bail, and Judgment by Default.*

Our Lord the King gave in Charge to the Sheriff of *Middleſex* his Writ Cloſe in theſe Words, *to wit*, *GEORGE* the Second, *&c.* (inſert the whole Writ *verbatim* to) Witneſs Sir *William Lee*, Knight, at *Weſtminſter*, the Day of in the Year of our Reign; At which Day the aforeſaid *A. B.* in his pro-

Award on the Roll of two Sci. Facias's againſt Bail, and Judgment by Default.

per Perſon came before our Lord the King at *Weſtminſter*, and the Sheriff, *to wit*, (naming him) Sheriff of the ſaid County of at that Day returned, that the ſaid *C. D.* and *E. F.* had not, nor had either of them, any thing in his Bailiwick where or by which he could make known to them or either of them; neither were they, or was either of them, found in the ſame; and the ſaid *E. F.* and *G. H.* came not, nor did either of them come: Therefore as before, It is commanded to the Sheriff, That by Good, and ſo forth, he make known to the ſaid *E. F.* and *G. H.* that they be before our Lord the King at *Weſtminſter*, on next after to ſhew in Form aforeſaid, if and ſo forth; and further, and ſo forth. The ſame Day is given to the ſaid *A. B.* theſe, and ſo forth; at which Day the aforeſaid *A. B.* came in his proper Perſon before our Lord the King at *Weſtminſter*; and the ſaid Sheriff returned (as before) and the ſaid *E. F.* and *G. H.* although at that Day ſolemnly required, came not, nor did either of them come, but made Default. It is therefore conſidered, that the ſaid *A. B.* have his Execution againſt the ſaid *E. F.* and *G. H.* of the Debt and Damages aforeſaid, [as the Caſe is] according to the Force, Form and Effect of the ſaid Recognizance, and ſo forth.

Return nihil.

Second Scire facias.

Nihil *returned.*

How Sci. Fa's *of different Terms to be entered.*

Where two Writs of *Scire facias* iſſue, returnable in different Terms, the firſt muſt be entered of the Term wherein it is returnable, and an Award of the Second is ſufficient, without ſetting it forth at length.

If

If the Bail appear, you deliver a Declaration on double Penny Stamp, give a Rule to plead, and demand a Plea, as in other Caſes. *How if Bail appear.*

The Declaration is in this Manner:

Michaelmas *Term* (*as the Term is*) *in the Twelfth Year of King* George *the Second.* *Declaration on Sci. Fa.*

Middleſex, *to wit.* Our Lord the King gave in Charge to the Sheriff of *Middleſex* his Writ cloſe in theſe Words, *to wit*, *George* the Second, by the Grrce of God, (and ſo the whole Entry as before *verbatim*, to the Return incluſive, of that Writ on which the Bail appear) And the ſaid *E. F.* and *G. H.* at that Day having been ſolemnly required came by *R. R.* their Attorney; upon which the ſaid *A. B.* prays that Execution may be adjudged to him of the Debt and Damages aforeſaid, according to the Form, Force and Effect of the ſaid Recognizance, and ſo forth.

After a Writ of Error is brought on the Judgment in the Original Action, the Court will ſtay the Proceedings, upon a *Scire facias* againſt the Bail, until the Determination of the Writ of Error, upon the Bail's undertaking to render the Defendant to the Cuſtody of the Marſhal, or pay the Money recovered, if the Judgment be affirmed, within 4 Days next after the Affirmance thereof, *Proceedings to ſtay againſt Bail till Determination of Writ of Error upon the Bail's Undertaking, &c.*

and likewiſe undertaking to bring no Bill in Equity. *Myer & Arthur, Paſ. 8 Geo. 1.*

Bail in Original Action, not liable to Coſts in Error.

The Bail in the Original Action, upon a Writ of Error brought, are not liable to the Coſts upon the Affirmance of the Judgment.

Bail liable, though Plaintiff recovers more than expreſſed in the Proceſs.

Formerly, where the Plaintiff recovered a greater Sum than was laid in the Action, the Bail was not chargeable *in iſta Actione.* 1 *Salk.* 102. But now where the Plaintiff declares for, or recovers a greater Sum than is expreſſed in the Proceſs on which he declares, the Bail ſhall not be diſcharged, but be liable for ſo much as is ſworn to and indorſed on the ſaid Proceſs, or for any leſſer Sum which the Plaintiff in ſuch Action ſhall recover. *Paſ. 5 Geo. 2.*

Bail diſcharged by declaring in a wrong County.

If an Action be by Original ſued out in *London*, and Bail put in, and the Declaration laid in another County, though it is good againſt the Defendant; yet his Bail are diſcharged, and not liable to a *Scire facias.* 3 *Lev.* 235, 245.

Bail may take their Principal even on a Sunday.

Bail may take up their Principal even on a *Sunday*, and confine him till the next Day, and then render him, for the Entry is *Traditur in Ballium, &c.* and the doing of it on a *Sunday* is no Service of Proceſs, but rather like the Caſe where a Sheriff arreſts by Virtue of a Proceſs of Court on a *Saturday*, and the Party eſcapes, he may take him on a *Sunday*, for that is only a Continuance of the former Impriſonment. 6 *Mod.* 231.

What Time to render him when a Scire facias *brought.*

Though upon a *Non eſt inventus* returned on the *Capias ad Satisfaciendum* againſt the Principal, the Bail's Recognizance is forfeited

in

in Strictneſs of Law; yet if the Defendant renders himſelf, or be ſurrendered by his Bail, at any Time before the Return of the ſecond *Scire facias*, or of the firſt where a *Scire feci* is returned, or on the very Day of the Return *Sedente Curia*, the Court will *ex Gratia* ſtay Proceedings.

Upon a *Non eſt Inventus* returned on the *Capias* againſt the Principal, the Plaintiff brought Debt upon the Recognizance, and the Bail pleaded a Render before the Return of the *Latitat*, i. e. a *Latitat* actually ſued out and entered; *Et per Cur.* Though this cannot be pleaded, yet the Plaintiff ſhall not by this new Courſe prevent the Grace of the Court. We will allow a Render in this Caſe of an Action of Debt, as well as a *Scire facias*, and that at any Time before the Return of the *Latitat*, and perhaps may enlarge the Time. 1 *Salk.* 101.

What Time the Bail, when an Action brought againſt them on the Recognizance, ſhall have to render the Defendant's Body in Diſcharge of themſelves.

And it was ſoon afterwards ordered, That if any Perſon or Perſons being Bail here in Court for any Defendant, in any Action whatſoever, ſhall be impleaded by Action of Debt upon the Recognizance: Such Perſon or Perſons ſhall have Leave to render the Defendant to the Cuſtody of the Marſhal of this Court, in Diſcharge of his Bail, by the Space of Eight entire Days, in full Term, next after the Return of the Writ of *Latitat*, or other Proceſs ſued out againſt ſuch Bail, and upon Notice thereof given to the Plaintiff or his Attorney, all further Proceedings againſt the Bail on the Recognizance ſhall ceaſe. *Trin.* 1 *Anne.*

Notice to be given the Plaintiff's Attorney, of Defendant's ſurrendering in Diſcharge of his Bail.

Where any Defendant in any Action depending in Court ſhall be rendered to the Cuſtody of the Marſhal in Diſcharge of his Bail, the Attorney for ſuch Defendant ſhall immediately give Notice of ſuch Surrender, to the Attorney for the Plaintiff, and make Oath thereof before the Bail-piece ſhall be delivered to be filed, or be diſcharged; otherwiſe ſuch Render ſhall be void. *Trin.* 1 *Annæ.*

At what Time Bail may ſurrender Principal, though Notice be not given to the Plaintiff.

But *Mich.* 3 *Annæ, per Cur.* If Bail ſurrender the Principal at or before the Return of the ſecond *Scire facias*, it is good, tho' there be not immediate Notice of it to the Plaintiff, for the End of the Notice in that Caſe is Two-fold: One that the Plaintiff may, if he pleaſes, charge him in Execution; the other, that he be at no further Trouble or Charge in proceeding againſt the Bail; but if through want of Notice he is at further Charge againſt the Bail, that ſhall not vitiate the Surrender, but yet the Bail ſhall not be delivered till they pay ſuch Charges. 6 *Mod.* 238.

How upon a Perſon's rendering himſelf into Cuſtody in Diſcharge of his Bail in Court, or before a Judge, the Reddidit, *&c. is to be left.*

Where any Perſon ſhall render himſelf in Court, or before one of the Judges of the Court, in Diſcharge of his Bail, or ſhall be brought upon any Writ of *Habeas Corpus* into Court, or before one of the Judges of the Court, in Order to be committed to the Cuſtody of the Marſhal of the Court [as he may be in Diſcharge of his Bail] the Render-piece or Writ of *Habeas Corpus*, with the Return thereof, ſhall remain with the Secondary of the Court, or Clerk of the Judge before

Bail Sued in Debt on Recognizance in B: R. has 8 Days after ye Return of process [on wch Bail are Sued] to Surrender Dft. 9: 1. Mau.
and Being Sued by Sci: Fa. Princip.l may be Surrendred at any time before return of Sci: Fa. if returnd Scire fedi. or of 2 Alias Sci: Fa. if 2 first be returnd Nihil

But in outlawry no Surrender in discharge of Bail vid. fo. 156 antb.

before whom ſuch Perſon ſhall be rendered or brought, to be filed; and a Copy or Note only of ſuch Render or Return of the Writ of *Habeas Corpus*, under the Hand of ſuch Judge, or the Secondary, ſhall be delivered to the Marſhal at the Time of committing ſuch Perſon to his Cuſtody, and ſuch Copy or Note ſhall be made by the Perſon ſo rendering himſelf, or proſecuting ſuch Writ of *Habeas Corpus*, or by his Attorney on his Behalf. *Trin.* 3 *Annæ.*

Notice to the Marſhal.

As to Notice to the Marſhal. See Caſe *Walton* againſt *Sutton*, *Salk.* 272.

Surrender after Ca. Sa. *and Defendant eſcapes, not a good Surrender, becauſe it was an Indulgence.*

As to rendering before a Judge; *per Cur.* If at any Time after the Return of the *Capias*, the Bail ſurrender the Principal at a Judge's Chamber, and he thereupon is committed to the Tipſtaff, from whom he eſcapes or is reſcued, that will not be a good Surrender, becauſe it is Indulgence to the Bail to ſurrender after a *Capias* returned; *Secus* if it be before a *Capias* returned; for to ſurrender before or at the Return of the *Capias* is Matter of Right. 6 *Mod.* 238.

Render to be entered in the Marſhal's Book.

It is uſual to make an Entry of the Render in the Marſhal's Book, kept in the *King's Bench* Office.

After Render no Scire facias *againſt Bail.*

If Notice of the Render has been given, and an Affidavit made thereof, and the Bail-piece diſcharged by the Secondary and filed, no *Scire facias*, or other Proceſs, ought to be ſued out againſt the Bail.

If no Exonere-tur *entered, Bail liable.*

But if the Bail-piece be filed without being firſt diſcharged by the Secondary, the Bail does remain liable, although the Defendant

be

be actually in Priſon. See *Williams* and *Williams*, *Salk* 98.

A. B. againſt the Bail of *C. D.*

Michaelmas Term, 12th King *George* the Second.

Scire facias *againſt Bail on a Recognizance in Caſe.*

Middleſex, to wit. Our Lord the King gave in Charge to the Sheriff of *Middleſex* his Writ cloſe in theſe Words, *to wit*, *George* the Second, by the Grace of God, King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, and ſo forth, To the Sheriff of *Middleſex* Greeting: Whereas, *A. B.* lately in our Court before Us at *Weſtminſter*, by Bill, without our Writ, and by the Judgment of the ſame Court, recovered againſt *C. D.* ſixty and ſix Pounds for his Damages which he ſuſtained, as well by Means of the not performing certain Promiſes and Undertakings lately made by the ſaid *C. D.* to the ſaid *A. B.* As for his Coſts and Charges by him about his Suit in that Behalf expended, whereof the ſaid *C. D.* was convicted, as appears to us upon Record; and now on the Behalf of the ſaid *A. B.* in our ſaid Court before Us, we have been informed, That although Judgment be thereupon given, yet Execution of the ſaid Damages ſtill remain to be made to him; And whereas alſo *E. F.* of *&c.* *G. H.* of *&c.* *I. K.* of *&c.* *L. M.* of *&c.* *N. O.* of *&c.* *P. Q.* of *&c.* *R. S.* of *&c.* and *T. U.* of *&c.* heretofore, *to wit*, of the Term of St. *Hi-*

lary in the twelfth Year of our Reign, in our ſame Court before Us at at *Weſtminſter*, perſonally came, and became Pledges and each of them by himſelf became Pledge for the ſaid *C. D.* That if it ſhould happen that the ſaid *C. D.* ſhould be condemned in the ſaid Action, then they the ſaid *E. F. G. H. I. K. L. M. N. O. P. Q. R. S.* and *T. V.* granted, and each of them by himſelf granted, That all ſuch Damages, Coſts and Charges, as ſhould in that Behalf be adjudged to the ſaid *A. B.* ſhould be made of their, and each of their Lands and Chattels, and be levied to the Uſe of the ſaid *A. B.* If it ſhould happen that the ſaid *C. D.* ſhould not pay the ſaid Damages, Coſts and Charges to the ſaid *A. B.* or ſhould not render himſelf on that Occaſion, to the Priſon of the Marſhal of our *Marſhalſea*, before Us: Nevertheleſs, the ſaid *C. D.* has not yet paid the ſaid Damages, Coſts and Charges, to the ſaid *A. B.* nor ſurrendered himſelf on that Occaſion, to the Priſon of the Marſhal of our *Marſhalſea*, before Us, as on the Information of the ſaid *A. B.* in our ſaid Court before Us, we have been given to underſtand; whereupon the ſaid *A. B.* hath prayed Us, that a proper Remedy may be provided for him in this Behalf; and We being willing that that which is Juſt ſhould be done in this Caſe, command you, that by good and lawful Men of your Bailiwick, you make known to the ſaid *E. F. G. H. I. K. L. M. N. O. P. Q. R. S.* and *T. V.* That they be before Us at *Weſtminſter*, on *Monday*

day next after three Weeks from the Day of St. *Michael*, To ſhew if they have or know any thing to ſay for themſelves, why the ſaid *A. B.* ought not to have his Execution againſt them the ſaid *E. F. G. H. I. K. L. M. N. O. P. Q. R. S.* and *T. V.* of the Damages aforeſaid, according to the Force, Form and Effect of the ſaid Recognizance, if it ſhall ſeem expedient, and ſo forth; and further to do and receive all and ſingular thoſe Things which in our ſaid Court before Us ſhall then and there be conſidered of them in this Behalf; and have there then the Names of thoſe by whom you ſhall make known to them, and this Writ. Witneſs Sir *William Lee* Knight, at *Weſtminſter*, the twenty-firſt Day of *June* in the thirteenth Year of our Reign. At which Day, before our Lord the King at *Weſtminſter*, the ſaid *A. B.* came in his proper Perſon, and the Sheriff of *Middleſex*, *to wit*,

Return of the Sheriff, Nihil.

and Sheriff of the ſaid County of *Middleſex*, returned, That the ſaid *E. F. G. H. I. K. L. M. N. O. P. Q. R. S.* and *T. V.* had nothing, nor had either of them any thing in his Bailiwick, where or by which he could make known to them, or either of them; neither were they, nor was either of them, found in the ſame, and they came not, nor did either of them come:

Alias awarded.

Therefore as before, it is commanded to the Sheriff, That by good and lawful Men of his Bailiwick he make known to the ſaid *E. F. G. H. I. K. L. M. N. O. P. Q. R. S.* and *T. V.* that they be before our Lord the King

King at *Weſtminſter*, on *Tueſday* next after one Month of St. *Michael*, to ſhew in Form aforeſaid, if and ſo forth; and further, and ſo forth. The ſame Day is given to the ſaid *A. B.* there, and ſo forth: At which Day before our Lord the King at *Weſtminſter*, came as well the ſaid *A. B.* in his proper Perſon, as the ſaid *R. S.* and *T. V.* in their proper Perſons; And the Sheriff as before returned, That the ſaid *E. F. G. H. I. K. L. M. N. O. P. Q. R. S.* and *T. V.* had nothing, nor had either of them any Thing in his Bailiwick, where or by which he could make known to them, or either of them; neither were they, nor was either of them, found in the ſame; and the ſaid *E. F. G. H. I. K. L. M. N. O.* and *P. Q.* although at that Day ſolemnly required, came not, nor did either of them come, but made Default; upon which the ſaid *A. B.* prayed that his Execution againſt the ſaid *E. F. G. H. I. K. L. M. N. O. P. Q. R. S.* and *T. V.* of the Damages aforeſaid, according to the Force, Form and Effect of the ſaid Recognizance, might be adjudged to him, and ſo forth; And the ſaid *R. S.* in his proper Perſon comes and ſays, That the ſaid *A. B.* ought not to have his Execution againſt him, of the Damages, Coſts and Charges aforeſaid, by Pretence of the ſaid Recognizance; becauſe he ſays, That after the ſaid Judgment againſt the ſaid *C. D.* at the Suit of the ſaid *A. B.* was given in Form aforeſaid, and before the iſſuing forth of the ſaid firſt Writ of our ſaid Lord the King of *Scire facias* againſt

Return of the Sheriff, Nihil.

Six of the Bail make Default.

Plea by one of the Bail no Ca. Sa.

againſt the ſaid *R. S.* as Bail of the ſaid *C. D.* at the Suit of the ſaid *A. B.* no Writ of *Capias ad Satisfaciendum* upon that Judgment, by the ſaid *A. B.* againſt the ſaid *C. D.* was in due Manner ſued forth, returned and filed in the Court of the ſaid Lord the King now here of Record, which, according to the Cuſtom of that Court from the Time whereof the Memory of Man is not to the contrary, uſed and approved in the ſame, ought to have been done before any Writ of *Scire facias* againſt the ſaid *R. S.*'s Bail, as aforeſaid, ought to have iſſued forth. And this he is ready to verify; wherefore he prays Judgment whether the ſaid *A. B.* ought to have his Execution againſt him the ſaid *R. S.* of the Damages, Coſts and Charges aforeſaid, by Pretence of the ſaid Recognizance, and ſo forth. And the ſaid *T. V.* ſays, That the ſaid *A. B.* ought not to have Execution againſt him of the Damages aforeſaid; becauſe he ſays, That after the giving the ſaid Judgment, and before the iſſuing the ſaid firſt Writ of *Scire facias*, *to wit*, in Term in the Year of the Reign of our Lord the now King, the ſaid *A. B.* for the obtaining the Damages aforeſaid, proſecuted from the Court here upon the ſaid Judgment, a certain Writ of our Lord the King of *Fieri facias*, directed to the Sheriff of the County of *Surry*, againſt the ſaid *C. D.* by which Writ it was then commanded to the ſaid Sheriff, that of the Goods and Chattels of the ſaid *C. D.* he ſhould cauſe to be made the Damages aforeſaid,

Another Bail pleads a Levy by Fieri Facias.

foreſaid, and that he ſhould have that Money here on next after then next following, to render to the ſaid *A. B.* for the Damages aforeſaid; which ſaid Writ afterwards, and before the Return thereof, *to wit*, on the Day of in the Year aforeſaid, at *Croydon* in the ſaid County of *Surrey*, was delivered to one (the ſaid then, and until, and after the Return of the ſaid Writ, being Sheriff of the ſaid County) by Virtue of which ſaid Writ, the ſaid Sheriff afterwards and before the Return thereof, *to wit*, on the Day of in the Year aforeſaid, at *Croydon* aforeſaid, and cauſed the ſaid Damages to be made of the Goods and Chattels of the ſaid *C. D.* And this he is ready to verify; wherefore he prays Judgment whether the ſaid *A. B.* ought to have his Execution againſt him of the Damages aforeſaid, and ſo forth.

Replication, no Ca. Sa. ſued out.

And the ſaid *A. B.* as to the Plea of the ſaid *R. S.* ſays, That he, by any Thing by the ſaid *R. S.* above in Pleading alledged, ought not to be barred or hindered from having his ſaid Execution againſt him for the Damages aforeſaid, by Virtue of the ſaid Recognizance; becauſe he ſays, That after the ſaid Judgment againſt the ſaid *C. D.* at the Suit of the ſaid *A. B.* was given in Form aforeſaid, and before the Iſſuing forth of the firſt Writ of our ſaid Lord the King of *Scire facias* againſt the ſaid *R. S.* as Bail

of

of the ſaid *C. D.* at the Suit of the ſaid *A. B. to wit*, on the Day of in the Year of the Reign of our Sovereign Lord the now King, and ſo forth, he the ſaid *A. B.* at *Weſtminſter* in the County of *Middleſex* obtained and ſued forth out of the Court of our ſaid Lord the King, being before the King himſelf, the ſaid Court being then and there at *Weſtminſter* aforeſaid, a certain Writ of our ſaid Lord the King of *Capias ad Satisfaciendum* for the Damages, Coſts and Charges aforeſaid, upon the ſaid Judgment againſt the ſaid *C. D.* directed to the then Sheriffs of the City of *London*, by which Writ our ſaid Lord the King commanded the ſaid then Sheriffs, That they ſhould take the ſaid *C. D.* if he ſhould be found in their Bailiwick, and ſafely keep him, ſo that they might have his Body before our ſaid Lord the King, at *Weſtminſter*, on next after then next following, to ſatisfy the ſaid *A. B.* for the ſaid ſixty and ſix Pounds, for the Damages, Coſts and Charges aforeſaid, upon the ſaid Judgment againſt the ſaid *C. D.* At which Day the ſaid *A. B.* being in his proper Perſon in the Court of our ſaid Lord the King, before the King himſelf, (the ſaid Court being then and there at *Weſtminſter* aforeſaid) the ſaid Sheriffs of *London*, *to wit*, at that Day returned to our ſaid Lord the King, that the ſaid *C. D.* was not found in their Bailiwick, as by the ſaid Writ of *Capias ad Satisfaciendum*, and the Return thereupon remaining

Returned Non eſt Inventus.

remaining filed on Record in the ſaid Court of our ſaid Lord the King before the King himſelf at *Weſtminſter* aforeſaid, among the File of Writs of *Capias ad Satisfaciendum* of the ſaid Court, may more fully appear. And this he is ready to verify by that Record, and ſo forth; and prays the Record of the ſaid Writ, and the Return thereupon, by the Court of our ſaid Lord the King now here may be ſeen and inſpected, and ſo forth. *Iſſue.*

And the ſaid *A. B.* ſays, that he, by any Thing by the ſaid *T. V.* above by pleading alledged, ought not to be barred or retarded from having his Execution for the ſaid Damages againſt the ſaid *T. V.* becauſe he ſays, That he the ſaid *A. B.* has not at any Time hitherto, for the obtaining the ſaid Damages, proſecuted from the Court here upon the ſaid Judgment any Writ of our Lord the King of *Fieri facias* directed to the Sheriff of the County of *Surrey* againſt the ſaid *C. D.* as the ſaid *T. V.* has above by Pleading alledged; and he prays that this may be enquired of by the Country; And the ſaid *T. V.* thereupon doth the ſame, and ſo forth. And becauſe the Court of our Lord the King now here, is not yet adviſed what Judgment to give, as well of and concerning the Premiſſes againſt the aforeſaid *E. F. G. H. I. K. L. M. N. O.* and *P. Q.* for that they have made Default as of and concerning the Premiſſes between the ſaid *A. B.* and the ſaid *R. S.* above pleaded, a Day is given as well to the ſaid *A. B.* as the ſaid *R. S.* That they be before the

To the other Bail did not proſecute any Fieri facias.

Iſſue.

Continuance of firſt Iſſue by Curia adviſare vult.

Lord the King at *Weſtminſter*, on next after to hear their Judgment thereon, becauſe the ſaid Court of our ſaid Lord the King now here, is not yet adviſed thereof; And as to the trying the Iſſue above joined between the ſaid *A. B.* and the ſaid *T. V.* to be tried by the Country, the Sheriff is commanded, That he cauſe to come before our Lord the King at *Weſtminſter*, at the ſame Day, Twelve, and ſo forth, by whom, and ſo forth, and who neither, and ſo forth, to recognize, and ſo forth; becauſe as well, and ſo forth. The ſame Day is given as well to the ſaid *A. B.* as to the ſaid *T. V.* there, and ſo forth: At which Day, before our Lord the King at *Weſtminſter*, came as well the ſaid *A. B.* in his proper Perſon, as the ſaid *R. S.* and *T. V.* in their proper Perſons; but becauſe the Court of our ſaid Lord the King now here, is not yet adviſed what Judgment to give, as well of and concerning the Premiſſes againſt the aforeſaid *E. F. G. H. I. K. L. M. N. O.* and *P. Q.* for that they have made Default, as of and concerning the Premiſſes between the ſaid *A. B.* and the ſaid *R. S.* above pleaded, a Day is given as well to the ſaid *A. B.* as to the ſaid *R. S.* That they be before the Lord the King at *Weſtminſter*, on next after to hear their Judgment thereon, becauſe the ſaid Court of our ſaid Lord the King now here, is not yet adviſed thereof; and as to the trying the Iſſue above joined between the ſaid *A. B.* and the ſaid

As to the ſecond Iſſue, Venire *awarded.*

Parties appear.

Firſt Iſſue continued by Curia adviſare vult.

Sci: fa. to revive a Judgt.

a Sci. fa. to revive a Judgt. must be brot in ye same County ye first action was laid in. Roberts Rep.th 4
Nota it is said of it is a readier & cheaper way to bring an action upon a Judgt. than to revive
it by Sci. fa. especially if ye Debt be small, for in ye action you recover Cost & on the
Sci. fa. none. Compl. attend. 54 & post. 2nd Vol.
If you bring an action of Debt on a Judgt. as. bat. or Dim. suggest a divastavit vid post 224
the Decl.on on an action of Debt on a judgt. must not differ a word from the
Record of ye Judgt. if it does it is Error H.R. Mich. 16 G. 2d.
NB. But an Action of Debt on a Judgt. suggesting a Devastavit will not lye where a feme
is Defdt. as Admx. and Married, for in case of Cast. & Husband & wife must be both Defts.
in ye Writ and a feme Covert cannot waste. Ld Mr. Holfield.

ſaid *T. V.* to be tried by the Country, the Sheriff returned the ſaid Writ in all Things ſerved and executed, together with a Panel of the Names of the Jurors, of whom none, and ſo forth: Therefore the Sheriff is commanded, that he diſtrein the ſaid Jurors, by all their Lands, and ſo forth, and that of the Profits, and ſo forth, ſo that he may have their Bodies before our Lord the King at *Weſtminſter*, at that Day, or before the King's Right Truſty and Well-beloved Sir *William Lee*, Knt. his Chief Juſtice, aſſigned to hold Pleas before the King himſelf, if he ſhall firſt come, on next after at *Weſtminſter* aforeſaid, in the great Hall of *Pleas* there, according to the Form of the Statute in ſuch Caſe made and provided, for Default of the Jurors, becauſe none of them did appear; therefore let the Sheriff have the Bodies, and ſo forth. The ſame Day is given as well to the ſaid *A. B.* as to the ſaid *T. V.* there, and ſo forth.

Diſtringas awarded on the ſecond Iſſue.

Sci: Fa: to revive a Judgt. vid. fo. 149. 213

If Execution be not taken out within a Year and a Day after Judgment is given in a Cauſe, there muſt be a *Scire Facias* taken out to revive the Judgment, and Execution cannot be taken out before ſuch a *Scire Facias* is ſued forth, and Judgment thereupon obtained.

If Execution not within a Year and a Day after Judgment, a Sci. Fa. *muſt Iſſue to revive the Judgment.*

If the Plaintiff takes out Execution within the Year, and it is not ſerved, yet he may continue the ſame upon the Roll from

If Execution ſued out and continued on the Roll, no need of Sci. Fa.

Term to Term till ſerved, and need not ſue out any *Scire Facias*.

If a Ceſſet Executio *for a Year, Plaintiff may have Execution after a Year and Day without* Sci. Fa.

If a *Ceſſet Executio* were for a Year after the Judgment, yet the Plaintiff within the next Year after may take out Execution without a *Scire Facias*. But I apprehend the *Ceſſet Executio* ſhould be entered on the Roll.

And in Caſe of a Writ of Error.

* So if the Defendant brings a Writ of Error, and delays the Plaintiff for a Year, and then is Nonſuited, he may take out an Execution without a *Scire Facias*.

But not in Caſe of an Injunction.

Execution being ſtayed by Injunction out of *Chancery* for above a Year, the Injunction being diſſolved, Plaintiff took out Execution without a *Scire Facias*. *Sed per Cur'*; We cannot take Notice of the *Chancery* Injunction, and you might have taken out a Writ of Execution, and continued it by *Vicecomes non miſit Breve*; a *Superſedeas Quia Improvide* was awarded to the Execution. *Salk.* 322.

If Judgment of 10 *Years, muſt move Court for* Sci. Fa. *if above* 7, *muſt move the Side-Bar.*

If a Judgment be of ten Years ſtanding or above, the Plaintiff cannot ſue out a *Scire Facias* without Motion in Court; if under ten, but above ſeven Years, he cannot have a *Scire Facias* without a Motion at the Side-Bar.

If after Judgment ſo revived and before Execution Defendant die, muſt revive again, but may without Motion.

* If after ſuch Motion, and Judgment revived by *Scire Facias*, the Defendant dies before Execution, the Plaintiff muſt ſue a new *Scire Facias*, but may have it without Motion, for the Judgment was revived before; *per Cur'*. *Salk.* 598.

Scire

* If a Judgment in C.B. is affirmed on a writ of Error in K.B. altho a Year & day is past, an Execution may issue without a Sci. fa. any time within a Year & day after y affirmance, For y affirmance is as it were a new Judgment. 1. Roll. Abr. 899. — 5. Rep.t 86.
The Same if a Plt in Error discontinues &c. 1. Roll A. 899

Scire Facias *to revive a Judgment after a Year and a Day.*

Sci. Fa. *to revive a Judgment after a Year and a Day.*

GEORGE the Second, by the Grace of God, King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, and ſo forth, To the Sheriff of *Middleſex*, Greeting: Whereas *A. B.* lately in our Court before us at *Weſtminſter* by Bill, without our Writ, and by the Judgment of the ſame Court, recovered againſt *C. D.* otherwiſe called *C. D.* of *&c.* Four hundred and ſeven Pounds of Debt, and alſo ſeventy Shillings for his Damages, which he ſuſtained, as well by Means of detaining that Debt, as for his Coſts and Charges by him about his Suit in that Behalf expended, whereof the ſaid *C. D.* was convicted, as appears to us from the Record; and now on the Behalf of the ſaid *A. B.* in our Court before us, we have been informed, that although Judgment be thereupon given, yet Execution for the ſaid Debt and Damages ſtill remains to be made to him; whereupon the ſaid *A. B.* humbly intreated us, that a proper Remedy may be provided for him in this Caſe; and we being willing that what is Juſt ſhould be done on this Occaſion, Command you, that by good and lawful Men of your Bailiwick you make known to the ſaid *C. D.* that he be before us at *Weſtminſter*, on _ _ _ _ next after _ _ _ _ _ _ to ſhew, if any Thing

If an Alias ſay as we have before commanded you.

Alias Sci: Fa: to be Tested on ye Return of ye 1st. Sci: Fa.
No Alias Sci: Fa. to iſſue untill ye firſt Sci: Fa. is returnable.

Thing he has or knows to ſay for himſelf, why the ſaid *A. B.* ought not to have his Execution againſt him for the ſaid Debt and Damages, according to the Force, Form and Effect of the ſaid Recovery; if it ſhall ſeem expedient, and ſo forth; and further to do and receive what our ſaid Court before us ſhall then and there conſider of him in this Behalf; and have you there then the Names of thoſe by whom you ſhall make known to him, and this Writ. Witneſs, &c.

Muſt be directed into the County where the Original Action was brought.

The *Scire Facias* ought to be directed into the County where the Original Action was brought, upon which the Judgment to be revived by the *Scire Facias* was obtained; for it ſhall be intended, that the Party againſt whom the Judgment was obtained doth inhabit ſtill in that County.

If either of the Parties die, Execution cannot be ſued out till a Sci. Fa. *and Judgment upon it.*

Where either Plaintiff or Defendant, or one of the Plaintiffs, or one of the Defendants die, there cannot be any Execution ſued out upon the Judgment, until a *Scire Facias* ſued out and Judgment thereupon; becauſe there muſt be a new Judgment upon the *Scire Facias* to warrant the Execution, that being different from the old Judgment. See *Stat.* 8 & 9 *W.* 3. *c.* 10. 1 *R. A.* 900

vid fo: 218. post.

but if 3 Moſt dyes after Execution awarded, the Sheriffe may take 3 Goods in 3 hands of his Ex.rs or Adm.rs 1 Roll. Rep. 889

Michaelmas

Michaelmas *Term in the thirteenth Year of King* George *the Second.*

Middleſex, *to wit.* OUR Lord the King gave in Charge to the Sheriff of *Middleſex* his Writ Cloſe, in theſe Words, *to wit*, *George* the Second, by the Grace of God, King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, and ſo forth, To the Sheriff of *Middleſex*, Greeting: Whereas *A. B.* lately in our Court, before us at *Weſtminſter*, by Bill, without our Writ, and by the Judgment of the ſame Court, recovered againſt *C. D.* fifty Pounds for his Damages which he ſuſtained as well by Means of the not performing certain Promiſes and Undertakings by the ſaid *C. D.* made to the ſaid *A. B.* as for his Coſts and Charges by him about his Suit in that Behalf expended, whereof the ſaid *C. D.* was convicted, as appears to us from the Record; And now on the Behalf of the ſaid *A. B.* in our Court before us, we have been informed, that although Judgment be thereupon given, yet Execution of that Judgment ſtill remains to be made to him; and that the ſaid *C. D.* is dead, and died Inteſtate; and that Adminiſtration of all and ſingular the Goods and Chattels, Rights and Credits, which were of the ſaid *C. D.* at the Time of his Death, was, after the Death of the ſaid *C. D.* at *Weſtminſter* in

Entry of two Sci. Fa. *and* Nihils *returned, and Judgment thereon againſt an Adminiſtrator in Caſe, on Judgment againſt his Inteſtate.*

your County, in due Form of Law committed to one *E. D.* Widow and Relict of the ſaid *C. D.* as on the Information of the ſaid *A. B.* in our ſaid Court before us, we have been alſo informed; whereupon the ſaid *A. B.* hath humbly intreated us, that a proper Remedy may be provided for him in this Behalf; and we being willing that that which is Juſt ſhould be done on this Occaſion, Command you, that by good and lawful Men of your Bailiwick you make known to the ſaid *E. D.* that ſhe be before us at *Weſtminſter*, on next after to ſhew, if any Thing ſhe has or knows to ſay for herſelf, why the ſaid *A. B.* ought not to have Execution againſt her of the Damages, Coſts and Charges aforeſaid, of the Goods and Chattels which were of the ſaid *C. D.* at the Time of his Death in her Hands to be adminiſtred; if it ſhall ſeem expedient, and ſo forth; and further to do and receive what our ſaid Court before us ſhall then and there conſider of her in this Behalf; and have you there then the Names of thoſe by whom you ſhall make known to them, and this Writ. Witneſs Sir *William Lee*, Knight, at *Weſtminſter*, the twenty-third Day of *October* in the twelfth Year of our Reign: At which Day before our Lord the King at *Weſtminſter* the ſaid *A. B.* came in his proper Perſon; and the Sheriff of *Middleſex*, *to wit*, and

Return Nihil.

Sheriff of the ſaid County, returned, that the ſaid *E. D.* had not any thing in his Bailiwick,

your County, in the Form of Law contained to one *A. D.* Widow and Relict of the said *C. D.* as for the Information of the said *A. B.* in our said Court before us, you have been also commanded, &c. whereupon the said *A. B.* hath humbly intreated us, that a proper Remedy may be provided for him in this Behalf; and we being willing that that which is Juſt ſhould be done on this Occaſion, Command you, that by good and lawful Men of your Bailiwick you make known to the ſaid *A. D.* that ſhe be before us at *Weſtminſter*, on next after to ſhew, if any Thing ſhe has or knows to ſay for herſelf, why the ſaid *A. B.* ought not to have Execution againſt her of the Damages, Coſts and Charges aforeſaid, of the Goods and Chattels which were of the ſaid *C. D.* at the Time of his Death in her Hands to be adminiſtred; if it ſhall ſeem expedient, and ſo forth; and further to do and receive what our ſaid Court before us ſhall then and there conſider of her in this behalf; and have you there the Names of Pledges by whom you ſhall make known to them, and this Writ. Witneſs Sir *William Lee*, Knight, at *Weſtminſter*, the twenty-third Day of October in the twelfth Year of our Reign. At which Day before our Lord the King at *Weſtminſter* the ſaid *A. B.* came in his proper Perſon, and the Sheriff of *Middleſex*, to wit, and Sheriff of the ſaid County, returned, that the ſaid *E. D.* had not any Goods in his Bailiwick.

Bailiwick, where or by which he could make known to her; neither was ſhe found in the ſame; and ſhe came not: Therefore, as before, it is Commanded to the Sheriff, that by good and lawful Men of his Bailiwick he make known to the ſaid *E. D.* that ſhe be before our Lord the King at *Weſtminſter*, on next after to ſhew in Form aforeſaid, if, and ſo forth; and further, and ſo forth. The ſame Day is given to the ſaid *A. B.* there, and ſo forth: At which Day before our Lord the King at *Weſtminſter* came the ſaid *A. B.* in his proper Perſon; and the Sheriff as before returned, that the ſaid *E. D.* had not any Thing in his Bailiwick, where or by which he could make known to her; neither was ſhe found in the ſame; and the ſaid *E. D.* although at that Day ſolemnly required, came not, but made Default: It is therefore conſidered, that the ſaid *A. B.* may have his Execution againſt the ſaid *E. D.* of the Goods and Chattels which were of the ſaid *C. D.* at the Time of his Death in the Hands of the ſaid *E. D.* to be adminiſtred, if ſhe has ſo much in her Hands, by the Default of the ſaid *E. D.* and ſo forth.

Alias Sci. Fa. awarded.

Nihil returned.

Execution awarded de Bonis Teſtatoris.

If it be againſt Executors the *Scire Facias* runs thus:

GEORGE the Second, *&c.* To the Sheriff of Greeting: Whereas *A. B.* lately in our Court (as before to) as it

Sci. Fa. againſt Executors.

it appears to us from the Record; and afterwards the ſaid *C. D.* at in your County made his Laſt Will and Teſtament in Writing, and thereby appointed *E. F.* and *G. H.* Executors thereof, and afterwards died there, the ſaid *A. B.* being no ways ſatisfied of his Damages, Coſts and Charges aforeſaid; and now on the Behalf of the ſaid *A. B.* in our Court before us, we have been informed, that although the ſaid Judgment be given, yet Execution of that Judgment ſtill remains to be made to him; whereupon the ſaid *A. B.* hath humbly intreated Us, *&c.* (as in the former, the Judgment is the ſame).

If Plaintiff or Defendant dies after Interlocutory Judgment, Sci. Fa. *may go to revive Judgment, and ſhew Cauſe why Damages ſhould not be aſſeſſed.*

Where Plaintiff or Defendant dies after Interlocutory Judgment, and before final Judgment, the Action ſhall not abate, but may be revived by *Scire Facias*, but not ſo as to impower the Executor, *&c.* of a deceaſed Plaintiff to carry on an Action, which he as Executor, *&c.* could not have originally brought, or to load the Executor, *&c.* of a deceaſed Defendant with an Action that could not have been originally brought againſt ſuch Executor, *&c.* See *Stat.* 8 & 9 *W.* 3. *c.* 10.

Scire

Sci: Fa. for an Extr[x] ~~[illegible]~~ on a Judgm[t]. recovered by her as Extr[x] of Test[rs] Will

GEORGE the Second &c. To the Sheriff of .... greeting Whereas Eliz[th]. Hardon Extr[x] of y[e] last Will & Testament of I. S. her late husband dec[d]. Exhib[t] in our Court [as before in fo. 213 to] as it appears to us from y[e] Record. [and so on to y[e] end] with a proper Affid. Test[r] in Cur[y].

Scire Facias *for an Adminiſtrator of a Plaintiff dying after Interlocutory Judgment, and before Inquiry executed.*

GEORGE the Second, by the Grace of God, King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, and ſo forth, To the Sheriffs of *London*, Greeting: Whereas *A. B.* heretofore in our Court before Us at *Weſtminſter*, by Bill without our Writ impleaded *C. D.* being in the Cuſtody of the Marſhal of our *Marſhalſea* before Us; For that, *to wit*, that whereas (recite the whole Declaration) to the Damage of the ſaid *A. B.* of 200 *l.* as he ſaid; and thereupon he brought Suit, and ſo forth; and in ſuch manner were the Proceedings in our ſaid Court before Us at *Weſtminſter*, that afterwards, *to wit*, in the Term of *Holy Trinity* laſt paſt, it was conſidered by our ſaid Court before Us, That the ſaid *A. B.* ought to recover againſt the ſaid *C. D.* his Damages occaſioned by Means of the Premiſſes; but becauſe it was unknown to our ſaid Court before Us, what Damages the ſaid *A. B.* had ſuſtained by Means of the Premiſſes, it was Commanded to the then Sheriffs of *London*, that by the Oaths of twelve good and lawful Men of their Bailiwick, they ſhould diligently inquire what Damages the ſaid *A. B.* had ſuſtained, as well by Means of the Premiſſes, as for his Coſts and Charges by

Interlocutory Judgment.

Inquiry awarded.

by him about his Suit in that Behalf expended; and that they ſhould ſend the Inquiſition, which they ſhould thereupon take, to Us at *Weſtminſter*, at a certain Day now paſt, under their Seals, and the Seals of thoſe by whoſe Oath they ſhould take the Inquiſition, together with our Writ thereupon directed to them, as by the Record and Proceeding thereupon now remaining in our ſaid Court before Us plainly appears; yet Inquiſition of the ſaid Damages ſtill remains to be made; and the ſaid *A. B.* after Interlocutory Judgment had been given in Form aforeſaid, died Inteſtate, *to wit*, at *London* aforeſaid, and ſo forth; after whoſe Death, *to wit*, on the Day of in the Year of our Lord at *London* aforeſaid, and ſo forth, Adminiſtration of all and ſingular the Goods and Chattels, Rights and Credits which were of the ſaid *A. B.* at the Time of his Death, was by *John* by Divine Providence Archbiſhop of *Canterbury*, Primate of all *England*, and Metropolitan, to whom the granting of Adminiſtrations of Right belonged, in due Manner committed to one *E. B.* Widow, late Wife of the ſaid *A. B.* as on the Information of the ſaid *E. B.* we have been given to underſtand; and becauſe We are willing that thoſe Things, which have been rightly done and adjudged in our ſaid Court before Us, ſhould be duly executed, We Command you, that by good and lawful Men of your Bailiwick, you make known to the ſaid *C. D.* that he be before

Death of Plaintiff.

Adminiſtration committed.

fore Us at *Weſtminſter*, on next after to ſhew, if any Thing he has or knows to ſay for himſelf, why the ſaid Damages in the ſaid Action ought not to be aſſeſſed and recovered by ſaid *E. B.* according to the Form and Effect of a certain Statute in ſuch Caſe lately made and provided; if it ſhall ſeem expedient, and ſo forth: And have there then the Names of thoſe by whom you ſhall make known to him, and this Writ. Witneſs Sir *William Lee*, Knight, at *Weſtminſter*, the twenty-third Day of *October* in the twelfth Year of our Reign.

Ventris,

Scire Facias *againſt an Adminiſtrator of a Defendant dying after Interlocutory Judgment.*

GEORGE the Second, and ſo forth, To the Sheriff of *Middleſex*, Greeting: Whereas *A. B.* lately in our Court before Us at *Weſtminſter*, *to wit*, in *Michaelmas* Term laſt paſt, by Bill without our Writ impleaded *C. D.* then being in the Cuſtody of the Marſhal of our *Marſhalſea* before Us; For that, *to wit*, that whereas (recite the whole Declaration) to the Damage of the ſaid *A. B.* of forty Pounds, as he ſaid, and thereupon he brought Suit, and ſo forth; and in ſuch Manner were the Proceedings in our ſaid Court before Us at *Weſtminſter*, that the

Interlocutory Judgment.

the ſaid *A. B.* ought to recover his Damages by Occaſion of the not performing the ſeveral Promiſes and Undertakings aforeſaid; but becauſe it was unknown to our ſaid Court before Us what Damages the ſaid *A. B.* had ſuſtained by Occaſion of the Premiſſes aforeſaid, We therefore Commanded you, that by the Oaths of twelve good and lawful Men of your Bailiwick you ſhould diligently inquire what Damages the ſaid *A. B.* had ſuſtained, as well by Occaſion of the not performing the ſeveral Promiſes and Undertakings aforeſaid, as for his Coſts and Charges by him about his Suit in that Behalf expended; and that you ſhould ſend the Inquiſition which you ſhould thereupon make to Us at *Weſtminſter*, on next after laſt paſt, under your Seal, and the Seals of thoſe by whoſe Oath you ſhould take that Inquiſition, together with that Writ: And the ſame Day was given to the ſaid *A. B.* before Us at *Weſtminſter* aforeſaid, as by the Record and Proceedings thereupon, remaining in our ſaid Court before Us at *Weſtminſter*, manifeſtly appears: And whereas before the ſaid next after the ſaid *C. D.* at *Weſtminſter* in your County died Intertate, and the Inquiſition of the Damages aforeſaid ſtill remains to be made, and one *E. D.* Widow and Relict of the ſaid *C. D.* is Adminiſtratrix of all and ſingular the Goods and Chattels which were the ſaid *C. D.*'s her late Huſband deceaſed; as on the Information of the ſaid *A. B.* We have

Inquiry awarded.

Death of Defendant.

Special Bail put in, give notice thereof in writing to ye Plts or Attorny in ye Plaint of names of ye Bail, where they live & before what judge as in other Cases, But it is said that Defts Attorny is not obliged to give any such Notice

The Manner of Excepting to Bail on a Hab: Corp: is for Plts Attorny to get a Rule from one of ye Judges of this Court for ye Deft to put in better Bail in 4 days, a Copy whereof is to be Served on ye Deft or his Attorny, whom Deft must justify in 4 days after such Service in Term & 6 days in Vacation or a procedendo will issue, or at least a Summons to shew Cause why a procedendo shd not issue

NB. if a Rule for better bail must be taken out & Served in 24 days after and Bail put in, or the Bail is to stand

Note also after a procedendo once issued you cant again have an Hab: Corpus

To Justify Special Bail on Ht: Corpus.

Having been Served with a Rule for better Bail, Give notice in Writing of justifying in Court as in comon cases. Get ye Judges Hd to bring Bail pcis & Hab Corp. to wt shd. Swear he is pd. 0-2:6 ~~Fee Counsel~~ Get Make Affidt of such Notice, Fee Counsel to move to justify 0-10:6. Attend wth ye Bail (prim. need not be there). Bail having Sworn that they are House Keepers & worth Double ye Debt Sworne to, Pay fee in Court to ye Crier 0:2:6. Next day Draw up ye Rule 0-2-0. Serve a Copy of it on Plts Attorny. Shew ye rule to ye Masters Cl. who gives you ye Bail pcis & Hab. Corp. to be filed & takes 0-1:0. file ye Hab. Corp & Bail pcis wch Ct. Fees 0-0-4.

Habeas Corpus to remove Causes

NB. A Habeas Corpus may be had to remove a Cause (exceeding 5£) out of Sheriffs Court to either of Superior Courts at any time before Trial in ye Inferior Court if Plt recovers in Superior Court he will then not before have his Costs in Both Courts.

Cash out of purse for removing a cause by Habeas Corpus. ——

Parchm.t & Duty for Hab. Corp.	0 – 5 – 1
To Mr Hawly Signer of the writs for Fiat & Stamping writ ——	0 – 7 – 8
NB. he takes but 6: 8 in Term time	
Sealing ——	0 – 0 – 7
To the Sheriff for return of Causes for & 1.st Action ——	0 – 4 – 10.
NB. He also takes 2: 4 for every other action	
Parchm.t & Duty for Bail piece	0 – 2 – 1
Charges of putting in Bail ——	0 – 7 – 4
NB he takes but 6: 6. in Form	——
	1: 7: 7

Expence in justifying

Duty & Oath in Court for affid.t of Service of Notice of justifying ——	0 – 2 – 6
To judges Cl.k for Bring Bail piece &c to Westm.r	0 – 2 – 6
To Counsel to move to justify ——	0 – 10 – 6
Fees in Court to Rule &c. ——	0 – 9 – 0
For drawing up the Rule & Duty ——	0 – 3 – 0
to the Master Cl.k & Mr Hawly on filing the Bail piece & Hab. Corpus ——	0 – 1 – 4
	2: 16: 5

Attorneys fees on above ab.t 2: 0: 4

To Remove a Cause from the Sheriffs Court in London in ye Kings Bench

N.B. The Cause of Action must be £5 or upwards. ye Stat of 21 Jac. 1. and 12. G. 1. & Bail must be put in ut infra.

Draw & Ingross Hab. Corpus on 5s. Stampt parchmt. as in fol. 16 B.

Then Ingross a Fiat on unstampt parchment thus ||

London (to wit) Let there be a writ of Habeas Corpus for C.L. to be y received returnable imediatly

J.____ Attorny.

Then make a precipe on paper thus ||

London (to wit) Habeas Corpus for C.L. to be received returnable imediatly. J. ____

Carry the Hab: Corpus, fiat, & Precipe to Mr Hawly ye Signer of ye writs, who keeps ye fiat & precipe & Stamps ye Hab: Corpus, & takes for himself, ye Judge, & Judges Cl. 0: 6: 8 in Term & 7: 8 in Vacation Seales ye writ at Seal office — — — — — 5: 7. —

Then Carry ye Hab. Corpus to ye Secondarys office of that Counter — wherein ye Plaint is entered & leave it with him for a Return 2 or 3 days, who takes 0: 4: 10 with it for ye 1st Action & 2: 4 for every other Action Deft. is charged with

Having got a return on ye Hab. Corpus carry it w.th ye Hab. Corp: to that Judges Chambers before whom you have made it returnable together with your Bail, and Having drawn a Bail peice on double 12d Stampt parchmt. as in fol. 171.

You pay Judges & putting in Bail 6: 6. in Term & 7: 4. in Vacn.

N.B. in K.B. Special Bail is required in all Cases removed here out of Inferior Courts Except Deft be Defr. or Admr. or ye Action be for words or Small Trespasses unless one of ye Judges order to ye Contrary Reg. 2. Ann. & Bail must not be put in till ye Sheriff has returned ye Hab. Corpus with ye Causes. Reg. Hil. 12. W. 3.

vert

Special Bail put in, give notice thereof in writing to ye Pltfs or attorny in ye Plaint of names of ye Bail, where they live & before what judge as in other Cases, But it is said that Deft.s attorny is not obliged to give any such Notice

The Manner of Excepting to Bail on a Hab: Corp: is for Pltfs Attorny to get a Rule from one of ye Judges of this Court for ye Deft. to put in Better Bail in 4 days, a Copy whereof is to be Served on ye Deft. or his Attorny, when Deft. must justify in 4 days after such Bail is Filed in Term & 6 days in Vacation or a procedendo will issue, or at least a Summons to shew Cause why a procedendo shd not issue

NB. if a Rule for better bail be taken out & Served in 24 days after one Bail put in, the Bail is to stand

Note also after a procedendo once issued you cant again have an Hab: Corpus

To Justify Special Bail on Ht: Corpus.

Having been Served with a Rule for better Bail, give notice in writing of justifying in Court as in comon cases. Get ye Judges D.r to bring Bail pcis Hab Corp. to wstm. Fees. he is pd. 0-2:6 ~~The Counsel~~ Get Make Affd.t of such Notice, Fee Counsel to move to justify 0-10:6. Attend ye Bail (pres.t need not be there): Bail having Sworn that they are House Keepers & worth Double ye Debt Sworn to, Pay pcis Court to ye Cryer 0:4:0. Next day Draw up ye Rule & go & Serve a Copy of it on Pltfs Attorny. Shew ye rule to ye Marshal D.r who gives you ye Bail pcis Hab. Corp. to be filed & takes 0-1:0. file ye Hab. Corp Bail pcis pd. Mr. Hardy 0-0-4.

have been given to underſtand; and becauſe We would that thoſe Things, which in our ſaid Court before Us have been rightly acted, ſhould be duly executed, We Command you, that by good and lawful Men of your Bailiwick you make known to the ſaid *E. D.* that ſhe be before Us at *Weſtminſter*, on next after to ſhew, if any Thing ſhe has or knows to ſay for herſelf, why the ſaid Damages in the ſaid Action ought not to be aſſeſſed, and to be recovered by the ſaid *A. B.* according to the Form and Effect of the Statute in ſuch Caſe made and provided; if it ſhall ſeem expedient, and ſo forth; and further to do and receive, *&c.*

At which Day before our Lord the King at *Weſtminſter*, the ſaid *A. B.* came by *R. R.* his Attorney, and the Sheriff of the County of *Middleſex*, *to wit*, and returned, that by *F. G.* and *J. K.* good and lawful Men of his Bailiwick, he had made known to the ſaid *E. D.* that ſhe ſhould be before our Lord the King at the Day and Place contained in the ſaid Writ, to ſhew, and ſo forth, according to the Tenor of the ſaid Writ; which ſaid *E. D.* ſo ſummoned at that Day, being ſolemnly required, came by *A. S.* her Attorney; upon which the ſaid *A. B.* prays that the ſaid Damages in the ſaid Action may be aſſeſſed, *&c.* *Return* Nihil.

Caſe

Entry of a final Judgment against the Executor of a Defendant dying before Writ of Inquiry.

Case upon ſeveral Promiſes; Defendant demurs; Judgment for the Plaintiff, and a Writ of Inquiry awarded, and before any final Judgment Defendant dies, and the Judgment revived according to the Statute.

Judgment for Plaintiff on Demurrer to Declaration.

At which Day before our Lord the King at *Weſtminſter* came the Parties aforeſaid, by their Attornies aforeſaid; upon which all and ſingular the Premiſſes being conſidered, and by the Court of our Lord the King here fully underſtood, and mature Deliberation being thereupon had, it appears to the Court of our Lord the King here, that the ſaid Declaration and the Matter therein contained, is good and ſufficient in the Law, to hold and maintain the ſaid Action of the ſaid *A. B.* againſt the ſaid *C. D.* Wherefore it is conſidered, That the ſaid *A. B.* ought to recover againſt the ſaid *C. D.* his Damages which he has ſuſtained by Occaſion of the Premiſſes; and becauſe it is unknown to the Court of our Lord the King, before the King himſelf now here, what Damages the ſaid *A. B.* has ſuſtained by Occaſion of the Premiſſes, It is therefore commanded to the Sheriffs of *London*, That by Twelve good and lawful Men of their Bailiwick they diligently enquire what Damages the ſaid *A. B.* has ſuſtained, as well by Occaſion of the Premiſſes, as for his Coſts and Charges by him about his Suit in this Behalf expended, and that the Inquiſition, which they ſhould thereupon take, they ſhould make apparent

Inquiry awarded.

to our Lord the King at *Weſtminſter*, on next after under their Seals, and the Seals of thoſe by whoſe Oaths they ſhould take the Inquiſition, together with the ſaid Writ thereupon directed to them. A Day is given to the ſaid *A. B.* there, and ſo forth; at which Day before our Lord the King at *Weſtminſter*, came the ſaid *A. B.* by his Attorney aforeſaid, and the Sheriffs did not return the ſaid Writ, nor did they do any Thing thereupon, and the ſaid *C. D.* did not come; and upon this the ſaid *A. B.* ſays, That the Inquiſition of the ſaid Damages ſtill remains to be made, and that the ſaid *C. D.* after the ſaid interlocutory Judgment was given in Form aforeſaid, and before any final Judgment obtained in the ſaid Action, and before this Day, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, made his laſt Will and Teſtament in Writing, and by his ſaid laſt Will conſtituted and appointed one *E. D.* his Wife Executrix of his ſaid Will, and the ſaid *C. D.* afterwards died there, after whoſe Death, and before this Day, the ſaid *E. D.* proved the ſaid Teſtament in due Form of Law, and took upon her the Burden and Execution of the ſaid Teſtament, *to wit*, at *London* in the Pariſh and Ward aforeſaid; and becauſe this is not denied, but the ſaid Allegation of the ſaid *A. B.* to the Court of our ſaid Lord the King now here appears to be true; Therefore the ſaid *A. B.* prays the Writ of our Lord the King of *Scire facias*, againſt the ſaid *E. D.* Executrix of the ſaid Teſtament,

Vic. non miſ. Breve.

Defendant makes his Will.

Death of Defendant.

Executrix proves the Will.

according to the Form of the Statute in such Case made and provided, to be directed to the Sheriffs of *London* aforesaid; and it is granted to him, and so forth; whereby it is commanded to the Sheriffs of *London*, that by good and lawful Men of their Bailiwick, they make known to the said *E. D.* that she be before our Lord the King at *Westminster*, on next after to shew, if any Thing she has or knows to say for herself, why the said Damages in the said Action ought not to be assessed and recovered by the said *A. B.* if it shall seem expedient, and so forth. At which Day before our Lord the King at *Westminster* came as well the said *A. B.* by his Attorney aforesaid, as the said *E. D.* in her proper Person, and the Sheriff of *London*, *to wit*, and return, That by Virtue of the said Writ to them directed by and good and lawful Men of their Bailiwick, they had made known to the said *E. D.* that she should be before our Lord the King at the Day and Place in the said Writ contained, to shew as the said Writ demands and requires; and the said *E. D.* says nothing, nor shews nor alledges any Matter to arrest final Judgment in the said Action, or why the said Damages in the said Action ought not to be assessed and recovered by the said *A. B.* Therefore at the Prayer of the said *A. B.* by the Court of our Lord the King now here, it is commanded to the Sheriffs of *London*,

Scire facias awarded.

Executrix appears.

Scire feci.

Nihil Dicit.

Inquiry awarded.

according to the Form of the Statute in such Case made and provided, to be directed to the Sheriffs of *London* aforesaid; and it is granted to him, and so forth; whereby it is commanded to the Sheriffs of *London*, that by good and lawful Men of their Bailiwick, they make known to the said *E. D.* that she be before our Lord the King at *Westminster*, on next after to shew, if any Thing she has or knows to say for herself, why the said Damages in the said Action ought not to be assessed and recovered by the said *A. B.* if it shall seem expedient, and so forth. At which Day before our Lord the King at *Westminster* came as well the said *A. B.* by his Attorney aforesaid, as the said *E. D.* in her proper Person, and the Sheriff of *London*, *to wit*, and return, That by Virtue of the said Writ to them directed by and good and lawful Men of their Bailiwick, they had made known to the said *E. D.* that she should be before our Lord the King at the Day and Place in the said Writ contained, to shew as the said Writ demands and requires; and the said *E. D.* says nothing, nor shews nor alledges any Matter to arrest final Judgment in the said Action, or why the said Damages in the said Action ought not to be assessed and recovered by the said *A. B.* Therefore at the Prayer of the said *A. B.* by the Court of our Lord the King now here, it is commanded to the Sheriffs of *London*,

Scire facias awarded.

Executrix appears.

Scire feci.

Nihil Dicit.

Inquiry awarded.

Q 2 to

False suits a-
mercia.

Essoins at
first.

Scire fac.

Nihil Dic.

Inquiry a-
warded.

according to the Form of the Statute in such
Case made and provided, to be directed to
the Sheriff of London, commanding him to
summon by the Oaths of twelve Men of the
City, and by all fuch of their Bailiwick,
who better know the Truth of the Matter,
that by Inquest they diligently enquire, if
the said A. D. did
known of the Lands, why the said Ex-
ecution on the said Judgment ought not to be
against the said A. D. if
his Attorney appear, on the first Day of
next Term following, before the Lord
Chief Justice of the Bench, at Westminster,
to shew the Premisses, or any thing in
Bar of the said Execution; and have there
then this Writ. Witness
Year of our Reign.

Upon the Return of this Writ, the Sheriff
good and lawful Men of his Bailiwick,
sworn and charged to enquire diligently
the said A. D. hath nothing, nor
any Thing in his Bailiwick, whereby the
said Execution ought to be delayed, nor
Judgment in the said Action ought to be
and that the said A. D. hath nothing, nor
any Thing in his Bailiwick, whereby the
said Execution ought to be delayed, nor
Judgment in the said Action ought to be
Because at the Return of this Writ, by
the Oath of our Lord the King re-
quired, it is commanded to the Sheriffs of

London,

London, that according to the Form of the Statute in ſuch Caſe lately made and provided, by the Oath of Twelve good and lawful Men of their Bailiwick, they diligently enquire what Damages the ſaid *A. B.* has ſuſtained, as well by Occaſion of the Premiſſes, as for his Coſts and Charges by him about his Suit in this Behalf expended; and that they ſend the Inquiſition, which, and ſo forth, to our Lord the King at *Weſtminſter*, on next after under their Seals, and the Seals of, and ſo forth, together with the Writ of our ſaid Lord the King, now thereupon directed to them. The ſame Day is given to the ſaid *A. B.* there, and ſo forth; at which Day before our ſaid Lord the King at *Weſtminſter* came the ſaid *A. B.* by his Attorney aforeſaid, and the Sheriffs of *London* aforeſaid, *to wit*, and Sheriffs of *London* aforeſaid, by Virtue of the ſaid Writ to them thereupon directed, return a certain Inquiſition taken before them at the *Guildhall* of the City of *London*, ſituate in the Pariſh of St. *Lawrence* in the *Old Jewry* in the Ward of *Cheap* in the ſaid City, on the Day of in the Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, and ſo forth, by the Oaths of Twelve, and ſo forth; by which it is found, that the ſaid *A. B.* hath ſuſtained Damages by Occaſion of the Premiſſes beſides his Coſts and Charges by him about his Suit in this Behalf expended,

Return.

to 58 *l.* and for theſe Coſts and Charges to 1 *l.* 6 *s.* 8 *d.* It is therefore conſidered, That the ſaid *A. B.* recover againſt the ſaid *E. D.* his Damages aforeſaid, by the ſaid Inquiſition found, in Form aforeſaid, as alſo 28 *l.* 13 *s.* 4 *d.* which by the Court of our ſaid Lord the King now here were adjudged of Increaſe to the ſaid *A. B.* by his Aſſent, for his ſaid Coſts and Charges, which ſaid Damages in the whole amount to 88 *l.* to be levied of the Goods and Chattels of the ſaid *C. D.* at the Time of his Death, in the Hands of the ſaid *E. D.* to be adminiſtred, if ſhe has ſo much in her Hands, and ſo forth.

Final Judgment.

De Bonis Teſtatoris.

Method to obtain Judgment de Bonis Propriis, *againſt an Executor or Adminiſtrator.*

Where a Judgment by Default has been obtained in an Action brought againſt an Executor or Adminiſtrator, (which is *de Bonis* of the Deceaſed only) the Way formerly was, on *Nulla bona* returned on a *Fieri facias*, to iſſue out a Writ to enquire whether the Defendant had waſted any of the Effects of the Deceaſed, and upon a *Devaſtavit* returned by Inquiſition to proceed by *Scire facias*, for the Defendant to ſhew Cauſe why the Plaintiff ſhould not have Judgment *de Bonis propriis*; to which *Scire facias* the Defendant might appear and plead *Plene Adminiſtravit*. Now the *Fieri facias*, Inquiry and *Scire facias* are made out as the ſpeedier Way in one Writ; but it is not worth while to proceed this Way for a ſmall Debt, the Plaintiff being allowed no Coſts after

after the firſt Jndgment, unleſs the Defendant appears and pleads to the *Scire facias*.

The readier and cheaper Method is to bring an Action of Debt on the Judgment, ſuggeſting a *Devaſtavit*.

Venire, Diſtringas and Jurata, on Trial upon a Scire facias.

In the *Venire*, *Diſtringas* and *Jurata*, for a Trial upon a *Scire facias*, after the Words [of a Plea of Debt or Treſpaſs, as the Action is] you add theſe Words, "wherein upon a *Scire facias*, and ſo forth."

Ejectment.

The Nature of an Action in Ejectment.

THIS is an Action for a Tenant for Term of Years, who is ouſted of his Poſſeſſion, to recover his Term and Damages.

Now the common Action for trying Titles to Land.

But it is now become the moſt uſual Action for trying Titles to Land, and ſupplies the Place of many real Actions.

The Method of commencing the Action.

And the Method is to feign a Leaſe and an Ejector, and draw a Declaration againſt the feigned Ejector, and ſend a Copy thereof to the Tenant in Poſſeſſion, giving him Notice to appear and defend his Title, or elſe that the Ejector will ſuffer Judgment by Default, and thereby the Tenant will be turned out of Poſſeſſion.

Tenant or Landlord may be admitted to defend, on entering into Common Rule.

And thereupon the Tenant or the Landlord may be admitted to defend the Poſſeſſion or Title, on entering into a Rule of Court to become Defendant in the Room of the Caſual Ejector, and to confeſs the

Any person claiming Title to the premises in Question may (with leave of the Court) be made Defendant with the Tenant in Possession; but the Court never admits such person to defend alone without the Tenant. post p. 239

Leaſe, Entry and Ouſter at the Trial, and inſiſt upon the Title only.

The Form of a Declaration in Ejectment.

Trinity *Term in the Eleventh and Twelfth Years of King* George *the Second.*

Middleſex. *A. B.* complains of *C. D.* in the Cuſtody of the Marſhal, and ſo forth; for that, *to wit*, That whereas *E. F.* Gentleman, on the X Day of in the Eleventh Year of, &c. at *Weſtminſter* in the County of *Middleſex*, had demiſed and granted, and to Farm let to the ſaid *A. B.* four Meſſuages, (reciting the Parcels) with the Appurtinances, ſituate, lying and being in the Pariſh of (the Place where the Premiſſes lie) in the County aforeſaid, to have and to hold the ſaid Tenements, with the Appurtinances aforeſaid, to the ſaid *A. B.* and his Aſſigns, from the Day of then laſt paſt, unto the full End and Term of five Years thence next enſuing, and fully to be complete and ended; by Virtue of which ſaid Demiſe, the ſaid *A. B.* entered into the ſaid Tenements, with the Appurtinances, and was poſſeſſed thereof, until the ſaid *C. D.* afterwards, *to wit*, on the ſaid X Day of in the Eleventh Year aforeſaid, with Force and Arms, and ſo forth, entered on the Tenements aforeſaid, with

Of Ifgrill not lyes of a Chapel ſeparate from the Church or Chapel. It will not lye of an Advowſon alone, but it will of an Advowſon appendent to a Manor, Meſſuage or a Cottage in Groſs or Appendant. To find to Expreſs of Nature and Quality of the Tythes.

X After a Recovery in Ejectm.t by Verdict [not by Default] An action may be brought to recover of Meſne profits from the time of Deft.s Entry laid & found. Therefore it is proper to lay the Deft.s Entry as farr back as Plaint.s Title will admit of. v. p. 241

with the Appurtenances, in and upon the Poſſeſſion of the ſaid *A. B.* and ejected, drove out and amoved the ſaid *A. B.* from his ſaid Farm, his ſaid Term not being yet ended, and kept out, and ſtill keeps out the ſaid *A. B.* ſo ejected, drove out and amoved from his ſaid Poſſeſſion, and then and there did other Injuries to him, againſt the Peace of our Lord the now King, and to the Damage of the ſaid *A. B.* of ten Pounds; and thereupon he brings Suit, and ſo forth.

Robert Bicknell for the Plaintiff, for the Defendant. } Pledges, and ſo forth.

Notice to be wrote under the Declaration, for the Tenant in Poſſeſſion.

Mr. ———

I am informed that you are in Poſſeſſion, or claim Title to the Premiſſes in this Declaration in Ejectment mentioned, or to ſome Part thereof, and I being ſued in this Action as a caſual Ejector, and having no Claim or Title to the Premiſſes, do adviſe you to appear the firſt Day of next *Hilary* Term in His Majeſty's Court of *King's Bench* at *Weſtminſter*, by ſome Attorney of that Court, and then and there by Rule made of the ſame Court, to cauſe yourſelf to be made Defendant in my Stead; otherwiſe I ſhall ſuffer Judgment to

Notice to be wrote under Declaration.

be entered againſt me, and you will be turned out of Poſſeſſion.

Dated 7th October, 1738.

Your humble Servant.

C. D.

To be delivered to Tenant or Wife, and Notice read, &c.

A true Copy of this Declaration and Notice muſt be delivered perſonally to the Tenant or to his Wife, to whom at the Time of the Delivery the Notice ſhould be read over, or an Account given of the Contents and Meaning thereof.

Delivered to his Son, Daughter or Servant, not good, unleſs proved to come to his Hands, and he knew the Meaning of it.

A Copy of the Declaration, and Notice left for the Tenant with his Son, Daughter or Servant, he being abroad or out of the Way, is not a good Delivery, unleſs it evidently appear to the Court, that ſuch Declaration and Notice came to his Hands before the *Eſſoin*-Day of the Term, and that on Receipt thereof, he very well underſtood the Contents and Meaning of the Notice; and in ſuch Caſe it has been held a good Delivery. See *Salkeld* 255. *pl.* 5.

Not good Delivery on a Sunday, &c.

The Delivery of the Declaration on a *Sunday*, or after, or even upon the *Eſſoin*-Day of that Term wherein the Defendant is to appear, is void.

If Tenant does not appear, Plaintiff may have Rule for Judgment.

If the Tenant do not appear and enter into the Common Rule, the Plaintiff may, on Affidavit of Delivery of the Declaration, move the Court, That unleſs the Tenant in Poſſeſſion will enter into ſuch Rule, Judgment

X If there are more than one person in possession Say. unto G: H Tenant in possession of part of the premises in ye said Deed. mentioned and also on the same day did deliver a true Copy of ye Deed. (which hereunto annext to B. the wife of G: F. one other Tent in possion of ye other part of ye premises in ye said Deed. mend) eod ye same time told ye said G. H and B. ye wife of G: F. &c.

ment may be entered againſt the caſual Ejector.

Affidavit.

G. H. of *&c.* maketh Oath, That he the Deponent, on the Day of laſt, delivered a true Copy of the Declaration, and Notice hereunto annexed, to Tenant in Poſſeſſion of the Premiſſes in the ſaid Declaration mentioned, and at the ſame Time told him, that it was a Declaration in Ejectment, and that unleſs he did appear by ſome Attorney of the Court of *King's Bench*, the firſt Day of this preſent *Michaelmas* Term, there would be a Judgment thereupon againſt the Defendant by Default, and he would be turned out of Poſſeſſion, or Words to that Effect.

Affidavit of Service of Declaration in Ejectment.

The Affidavit muſt be poſitive that the Tenant is Tenant in Poſſeſſion, for Information or Belief in this Caſe will not do.

Affidavit muſt be poſitive, that the Tenant is Tenant in Poſſeſſion, and not on Information.

If the Plaintiff does not move for Judgment in the Term wherein the Tenant had Notice to appear, the Court will not grant a Rule for Judgment. See *Salk.* 257. *pl.* 9.

Plaintiff muſt move for Judgment the ſame Term Tenant had Notice to appear.

Where the Premiſſes ſued for lie in *London* or *Middleſex*, if the Notice to the Tenant at the Bottom of the Declaration be to appear the next Term generally, without expreſſing any Day in the Term, the Tenant

What Time to appear where the Premiſſes lie in London *or* Middleſex, *and Notice is to appear of next Term generally.*

nant in Poſſeſſion has the whole Term to appear in.

What Time to appear, when Notice is for the firſt Day, or Beginning of the Term.

If the Notice be to appear the firſt Day of the Term, or the Beginning of the Term, (the Premiſſes lying in *London* or *Middleſex*,) the Tenant in Poſſeſſion, by the Courſe of the Court, has four Days incluſive, next after the Motion made for Judgment to appear and make his Defence, if the Motion be made early in the Term; otherwiſe the Court will allow only one or two Days, and ſometimes will order the Tenant to appear immediately, that the Plaintiff may be able to give Notice of Trial within Term.

But if the Plaintiff does not move for Judgment before the laſt four Days of the Term, the Tenant will have until two Days before the *Eſſoin*-Day of the ſubſequent Term, to appear and make his Defence.

What Time when in any other County.

Where the Lands lie in any other County than *London* or *Middleſex*, the Tenant in Poſſeſſion, although the Declaration be delivered before the *Eſſoin*-Day of *Eaſter* or *Michaelmas* Term, has four Days after the End of the next iſſuable Term to appear.

What Time when in Cumberland, or other County where Judges go but once a Year.

And if the Lands lie in *Cumberland*, or any other County where the Judges go but once a Year, the Tenant in Poſſeſſion may appear at any Time within four Days next after the End of the Term preceding the Aſſizes to be held for ſuch County.

Method of appearing.

The Method of appearing is by the Attorney for the Defendant, leaving the following Rule ſigned by himſelf, at the Chambers of one of the Judges, and giving Notice thereof

For which reason it is needless to move for a Rule for Judgt. until the last Day of an ensuing Term.

nant in Poſſeſſion has the whole Term to appear in.

What Time to appear, when Notice is for the firſt Day, or Beginning of the Term.

If the Notice be to appear the firſt Day of the Term, or the Beginning of the Term, (the Premiſſes lying in *London* or *Middleſex*,) the Tenant in Poſſeſſion, by the Courſe of the Court, has four Days incluſive, next after the Motion made for Judgment to appear and make his Defence, if the Motion be made early in the Term; otherwiſe the Court will allow only one or two Days, and ſometimes will order the Tenant to appear immediately, that the Plaintiff may be able to give Notice of Trial within Term.

But if the Plaintiff does not move for Judgment before the laſt four Days of the Term, the Tenant will have until two Days before the *Eſſoin*-Day of the ſubſequent Term, to appear and make his Defence.

What Time when in any other County.

Where the Lands lie in any other County than *London* or *Middleſex*, the Tenant in Poſſeſſion, although the Declaration be delivered before the *Eſſoin*-Day of *Eaſter* or *Michaelmas* Term, has four Days after the End of the next iſſuable Term to appear.

What Time when in Cumberland, *or other County where Judges go but once a Year.*

And if the Lands lie in *Cumberland*, or any other County where the Judges go but once a Year, the Tenant in Poſſeſſion may appear at any Time within four Days next after the End of the Term preceding the Aſſizes to be held for ſuch County.

Method of appearing.

The Method of appearing is by the Attorney for the Defendant, leaving the following Rule ſigned by himſelf, at the Chambers of one of the Judges, and giving Notice thereof

For which reason it is needless to move for a Rule for Judgm.t within 4 Last Days of an ensuing Term.

of the Comon Rule by Consent

If there be Sev.ll persons who Claim Title, the Rule may be drawn Generally or particularly

If Generally say " That A:B. & C:B. be made Deft.s in the place of J: K. and that they shall appear immediatly at the Suit of the Plt.e [and put in comon Bail (if not by Original) and shall receive a Declaration in an action of Trespass & Ejectment of Farm for the tenements in Question [and so on as on the other side]

This puts a necessity on the Plt.e at the Tryal to distinguish by proof what Tenem.ts are in each Defend.ts possion, or cant have a verdict

If Particularly say " That A: B. and C: B. be made Deft.s in the place of J: K. & that they shall appear immediatly at the Suit of the Plt.e and put in comon Bail & shall receive a Decl.n in a plea of trespass & Ejectment of Farm for Parts of the premisses in Question as are in the possession of W: M. their tenant and shall immediatly plead &c. (as in other)

This is the form of the Rule when it is drawn up Particularly & the means Tenem.ts made Defts.

It is Lay'd when the Lands are particularly expressed in the Rule, it — Supersedes the necessity of proof of the Lands are in his possion.

N.B. When one Deft does not defend the whole his Attorny must give a Rule of the premises in his possion by rule of Trin. 15. Car. 2. in 239. post. And if he will not give a Rule of the particulars Plt.e may be Nonsuit him before a Judge who will order the Rule to be specially drawn up.

thereof to the Plaintiff's Attorney, who muſt alſo ſign the Rule.

The Rule by Conſent.

Rule by Conſent.

Michaelmas *Term in the Twelfth Year of King* George *the Second.*

It is ordered, on the Aſſent of the Attornies of both Parties, that *G. H.* be made Defendant in the Place of the now Defendant *C. D.* and that he ſhall appear immediately at the Suit of the Plaintiff, and put in Common Bail, and ſhall receive a Declaration in a Plea of Treſpaſs, and Ejectment of Farm for the Tenements in Queſtion, and ſhall immediately plead Not guilty thereto, and upon Trial of the Iſſue ſhall confeſs Leaſe, Entry and actual Ejectment, and inſiſt upon the Title only; otherwiſe Judgment ſhall be entered for the Plaintiff againſt the now Defendant *C. D.* by Default; and if upon the Trial of the ſaid Iſſue, the ſaid *G. H.* ſhall not confeſs Leaſe, Entry and actual Ejectment, by which the ſaid Plaintiff ſhall not be able further to proſecute his Bill againſt the ſaid *G. H.* then no Coſts or Charges ſhall be adjudged upon ſuch *Non Pros*; but the ſaid *G. H.* ſhall pay to the Plaintiff his Coſts or Charges thereon to be taxed: And it is further ordered, That if upon Trial of the ſaid Iſſue, a Verdict ſhall be given for the ſaid *G. H.* or if it ſhall happen that the ſaid Plaintiff ſhall not further proſecute his ſaid Bill for any other Cauſe than

A. B. againſt C. D. for (naming the Parcels) in the County of on the Demiſe of E. F.

omitted by Writ of Original

by Writ of Original

Writ of Original

than for not confeſſing Leaſe, Entry and actual Ejectment aforeſaid, that then the Leſſor of the Plaintiff ſhall pay to the ſaid *G. H.* his Coſts and Charges in that Behalf to be adjudged, and ſo forth.

R. B. for the Plaintiff,
A. S. for the Defendant.

Rule thereon drawn up by the Clerk of the Rules.

This Rule, or rather Agreement for a Rule, after ſigned by the Plaintiff's Attorney, ſhould be carried to the Clerk of the Rules, who draws a Rule of Court from it in the ſame Words, of which each Attorney muſt beſpeak and take a Copy.

Defendant's Attorney to file Common Bail, and receive Declaration, and plead Not guilty.

Then the Attorney for the Defendant muſt file Common Bail on a *Cepi Corpus*, and on receiving a Declaration with the new Defendant's Name in it, inſtead of the caſual Ejector's, immediately plead the General Iſſue, and then the Proceeding to Trial is as in other Caſes.

But if Tenant in Poſſeſſion do not appear, Judgment againſt caſual Ejector.

If the Tenant in Poſſeſſion does not appear by the Time he ought, and enter into this Rule by Conſent, you may ſign Judgment againſt the caſual Ejector, and have a Writ of Poſſeſſion of the Premiſſes.

Judgment by Nil Dicit *againſt the caſual Ejector, with an Imparlance to the next Term after the Declaration.*

And now at this Day, *to wit*, next after (the firſt Day of the next Term) to which Day the ſaid *C. D.* had Leave to imparle to the ſaid Bill, and then to anſwer, and ſo forth, before our Lord the King at *Weſtminſter*, came the ſaid *A. B.* by his Attorney aforeſaid; And the ſaid *A. B.* prays that the ſaid *C. D.* may anſwer

When the Comon Rule is entered into by ye Tenant Draw the Issue
in which (instead of ye J. Dest ye Casual Ejector) ye now Defend.t mentioned in ye Rule is
inserted but ye old Plea (ye Supposed Lessee) is to stand, which Issue is to begin
with a Memorandum as in fo: 108. 109

If no Bail Comon Bail be filed in Ejectm.t and a Writ of Error be brot & it appears
by Defts attorneys Books that he had his fee to file Bail & ye attorney was dead, there ye Court will not
Bail to be filed Nunc pro Tunc because twas on ye part of Deft to file Comon Bail he shall
not be allow'd to take advantage of his own Error and because there was no remedy agt. Deft
because he had pd. given & fee, nor agt. ye attorney because he was dead

The Court of K. B. has no authority to proceed in Ejectm.t By Bill without Deft be
in Custody, therefore Comon Bail is to be filed, wch Supposes Deft to have been in Custody.

But a Bill of Ejectm.t need not be filed unless there be a Writ of Error brot then
then (besides ye files Roll) there must be a Bill of Ejectm.t filed before Errors are
assigned

anſwer to his ſaid Declaration; and the ſaid *C. D.* although at the ſame Day ſolemnly required, came not, neither did he ſay any Thing in Bar or Preclusion of the ſaid Action of the ſaid *A. B.* whereby the ſaid *A. B.* remains thereof undefended againſt the ſaid *C. D.* and ſo forth; It is therefore conſidered, That the ſaid *A. B.* do recover againſt the ſaid *C. D.* his Term yet to come of and in the ſaid Tenements with the Appurtenances, and alſo his Damages, by Occaſion of the ſaid Treſpaſs and Ejectment; and upon this the ſaid *A. B.* freely here in Court remits to the ſaid *C. D.* as well all ſuch Damages, Coſts and Charges, as may be adjudged to the ſaid *A. B.* in this Behalf, as all Judgments and Executions for the ſaid Damages, Coſts and Charges: Therefore let the ſaid *C. D.* be diſcharged from the ſaid Damages, Coſts and Charges; and the ſaid *A. B.* craves the Writ of our Lord the King, to be directed to the Sheriff of to cauſe him to have Poſſeſſion of his ſaid Term yet to come of and in the ſaid Tenements with the Appurtenances; and it is granted to him, returnable before our Lord the King at *Weſtminſter*, on next after The ſame Day is given to the ſaid *A. B.* there and ſo forth.

Remittit Dampna.

And the ſaid *C. D.* by *R. R.* his Attorney, comes and defends the Force and Injury, when, and ſo forth, and ſays nothing in Bar or Preclusion of the Action of the ſaid *A. B.* but made Default; whereby the ſaid *A. B.* remains thereof undefended (as before).

Judgment of the ſame Term with the Declaration.

for a Writ of Poſſeſſion vid. p. 253

Where

Judgment againſt caſual Ejector ſet aſide on Terms.

Where Judgment is obtained againſt the caſual Ejector, and a Trial is not loſt, the Court will, on Payment of Coſts and entering into the Common Rule for confeſſing Leaſe, Entry and Ouſter, ſet aſide ſuch Judgment as in other Actions, and not put the Tenant to the Charge and Hazard of recovering back his Poſſeſſion by another Action.

Who ſhall be admitted to join as Defendant with the Tenant.

No Perſon ſhall be admitted to be Defendant in Ejectment with the Tenant in Poſſeſſion, but he that hath been in Poſſeſſion or receives the Rents. *Sid. pract. Reg.* 499

Landlord may be joined on Requeſt, but not compelled to join.

The Landlord may be joined a Defendant with the Tenant in Poſſeſſion, if he requeſt it, but cannot be compelled to join; and though the Landlord ſhould be a Member of Parliament, he muſt be joined, and cannot be compelled to waive his Privilege. *Salk.* 256.

Any Perſon claiming Title may be made Defendant with the Tenant.

Any Perſon claiming Title to the Premiſſes in Queſtion may, with Leave of the Court, be made a Defendant with the Tenant in Poſſeſſion; but the Court never permits ſuch Perſons to defend alone, without the Tenant.

Landlord impowered to make himſelf Defendant, &c.

But great Inconveniences having happened by Tenants refuſing to appear to ſuch Ejectments, or ſuffer their Landlords to take on them the Defence thereof; by *Stat.* 11 *Geo.* 2. the Court may ſuffer the Landlord to make himſelf Defendant, by joining with the Tenant, in Caſe he ſhall appear; but if the Tenant ſhall refuſe to appear, Judgment ſhall be ſigned againſt the caſual Ejector for want thereof: But if the Landlord of any Part of

the Land &c. ſhall deſire to appear by himſelf, and conſent to enter into the like Rule that the Tenant, in Caſe he had appeared, ought to have done, then the Court ſhall permit ſuch Landlord ſo to do, and order a Stay of Execution upon ſuch Judgment againſt the caſual Ejector, until they ſhall further order therein.

Penalty on Tenant ſecreting Declaration in Ejectment.

And by the ſame Statute, a Tenant, to whom any Declaration in Ejectment ſhall be delivered, ſhall forthwith give Notice thereof to his Landlord, under Penalty of forfeiting the Value of three Years improved or Rack Rent.

Defendant to give a Note of the Premiſſes, where he doth not defend the whole.

Where a Defendant ſhall enter into the Common Rule, to confeſs Leaſe, Entry and Ouſter, for ſo much of the Tenements mentioned in the Declaration, as are in the Poſſeſſion of ſuch Defendant, or of his Under-Tenants, the Attorney of ſuch Defendant ſhall forthwith deliver to the Attorney of the Plaintiff, a Note in Writing of the Tenements ſo in the Poſſeſſion of ſuch Defendant, or of his Under-Tenants. *Trin.* 15 *Car.* 2.

Of Poſt. 29 Auth. to give a Note of particulars a Judge on a Summons will order & common rule to be particular vid. 235. ante

Proceeding againſt the Defendant, if he doth not confeſs Leaſe, Entry and Ouſter at the Trial.

If at the Trial the Defendant will not appear, and confeſs Leaſe, Entry and Ouſter, the Courſe is to call the Defendant, and his Attorney, if he be within the Rule, and then to call the Plaintiff himſelf, and Nonſuit him, and then upon the Return of the *Poſtea*, Judgment will be given againſt the caſual Ejector; alſo the Maſter will tax Coſts upon the Rule for confeſſing Leaſe, Entry and Ouſter; and if theſe be demanded

manded of the Defendant, and not paid; the Court upon Affidavit will grant an Attachment. *Salk.* 259.

Where ſeveral Defendants, and ſome will not confeſs, and ſome will.

And where there are ſeveral Defendants, and at the Trial ſome of them will not appear, and confeſs Leaſe, Entry and Ouſter, and they who do appear will not confeſs Leaſe, Entry and Ouſter, for thoſe who do not appear, the Plaintiff ſhall not be Non-ſuited, but they who do not appear ſhall be found Not guilty, and the Plaintiff ſhall proceed to Trial againſt thoſe who appear, and may enter up Judgment againſt the caſual Ejector, and have Execution thereon againſt the Lands of thoſe who did not appear, notwithſtanding they were found Not guilty upon the Trial. *Contra in 1 Vent. 295. 2 Vent. 194. 5.*

How if the not confeſſing is in Reſpect to ſome Variance.

But where the Defendant's not confeſſing Leaſe, Entry and Ouſter, is with Reſpect to ſome Variance, and the Defendant on that Account makes no Defence, Judgment ſhall not be entered againſt the caſual Ejector, neither ſhall the Plaintiff have any Coſts; and yet this Caſe is not provided for in the Rule by Conſent.

How to proceed where Plaintiff Non-ſuited on the Merits, or Verdict for the Defendant.

Where a Verdict ſhall be given for the Defendant, or the Plaintiff ſhall be Non-ſuited for any other Cauſe than for the Defendant's not confeſſing Leaſe, Entry and Ouſter, the Defendant muſt proceed to tax his Coſts on the *Poſtea*, as in other Actions, and ſue out a *Capias ad Satisfaciendum* againſt the Plaintiff; and if upon ſhewing the ſaid Writ under Seal to the Leſſor of the Plaintiff, and ſerving him with a Copy of the Rule

Attachment for Costs in Ejectm.t

George the Second &c. To the Sheriff of St. greeting we Command you that you attach John Burrows if he Shall be found in your Bailiwick and him Safely keep So that you may have his body before us at Westm.r on next after
to answer us of and concerning those things which Shall then and there be objected to him [or laid to his charge] and to do and receive whatsoever our said Court Shall then & there consider of concerning him in this behalf and have you there then this writ
Witness Sr. Wm. Lee Knt. at Westm.r &c.

Thus endorsed

By Rule of Court of Mich.s 16 Geo: 2d. for not paying 9li 6s Shillings and 8 pence for Costs

N.B. this Attachm.t is obtained on Motion & affid.t of Service of s.d Rule for Costs, & demand thereof. vid: f: 122. for s.d affid.t

Actions for Mesne Profits are brot on Judgm.ts in Ejectm.t by Verdict only because
then there is a real Deft. from whom Damages & Costs may be recovered But if
the Judgm.t be by Default it is agt a Casual Ejector, who is a feigned person

by Conſent to confeſs Leaſe, Entry and Ouſter, the Leſſor of the Plaintiff does not pay the Coſts, the Court will grant an Attachment againſt him.

The Leſſor of the Plaintiff or the Plaintiff may bring an Action for the Mean Profits. v. p. 254. for 2 Vol.

Where there is a Recovery in Ejectment by Verdict, an Action may be brought to recover the Meſne Profits from the Time of the Defendant's Entry laid in the Declaration; and at the Trial it is not neceſſary to prove any Entry of the Defendant, becauſe the Defendant doth in the Rule confeſs Leaſe, Entry and Ouſter; and alſo an Entry upon the Plaintiff by the Defendant is found by the Verdict againſt him. And this Action may be brought either by the Plaintiff in the Action or by the Leſſor of the Plaintiff, and where the Plaintiff brings it, he need only at the Trial to produce his *Poſtea* of his Recovery; but where the Leſſor brings it he muſt prove his Title over again if it be inſiſted on by the other Side, or elſe he will be Nonſuited.

Releaſe of Plaintiff a Contempt. 2. If in caſe of a Rule of Court to proceed by Bill & Plaint & nominal Plaintiff to be changed vid. Salk. 260. 5. Mo. 333 Contempt by Bro. Parl. 128. b. 135

* The Plaintiff in Ejectment is a mere Nominal Perſon, and Truſtee for the Leſſor; and if he releaſe the Action, or if an Action be brought for the mean Profits, and he releaſe it, he may be committed for Contempt. *Salk.* 260. *but it is a good Plea at least this*

Demiſe may be on a Day after the Term of which Declaration againſt Caſual Ejector is.

If the Demiſe be laid to be on a Day after the End of the Term of which the Declaration againſt the Caſual Ejector is, it is well; as if for Non-payment of Rent at *Michaelmas* a Declaration as of the laſt *Trinity* Term on a Demiſe in *October* following, be delivered before the Eſſoin-Day

R of

* If Plts in Ejectm.t (who is but nominal) dies, yet the action shall not abate because if there be any other person of the same name, the Court will intend him the person meant. 3. Keb. 772 v. 5. Mod. 333

of *Michaelmas* Term, if the Tenant does not appear, he can take no Exception to the Proceedings, as not being a Party; if he does appear, he must enter into the Common Rule to confess Lease, Entry and Ouster, and thereby undertakes to receive a new Declaration, which will then be of *Michaelmas* Term, and consequently subsequent to the Day of the Demise.

How Declaration ought to be when an Infant Lessor.

Where the Lessor of the Plaintiff is an Infant, the Declaration ought to set forth a Lease by Deed, and also rendering some Rent, though it be but five Shillings, otherwise the Lease will be void; whereas this Lease so declared upon, and which must be confessed by the Defendant in his Rule of Lease, Entry and Ouster, is not void, but voidable; and although this is really but a Fictitious Lease, and only to try the Title, yet it must be a good Lease in Law; if it is not, the Action will not lie upon it. See 2 *Leon. Case* 275. *fol.* 218. *Modern Cases* 248.

Costs

On Demise of an Infant Proceedings stayed till Security for Defendant's Costs.

If an Ejectment be brought on the Demise of an Infant, the Court will stay the Proceedings till a sufficient Plaintiff be named, or some Person undertake on Behalf of the Infant to pay such Costs as shall be adjudged to the Defendant.

When Lease sealed on the Premisses, there must be an Affidavit of the whole Proceeding.

Where the House is empty, the Lands untenanted, and the Proceedings are in the old Way by sealing a Lease on the Premisses; on the Motion for Judgment there must be an Affidavit of the Sealing the Lease, and the Purport of it ought to be shortly

The Plte in Ejectm.t (tho he is but nominal) yet if he be not found or not able to pay the Costs, The Attorney or Sollr. is lyable, or may be committed untill he pay the Costs, or produce the Plte yt is able to pay them. 6. Mod. 309. 230.66

If a Stranger carries on an Ejectm.t in ano.r name who has Title & yet is so poor that he cant pay Costs in case he fails, upon affid.t of this matter the Court will order such person to pay Costs who carries on the Suit to pay Costs to the Deft. 1. Keb. 827.

In what Cases ye 5th way still necessary notwithstanding ye method of confessing Lease Entry and ouster

When a Corporation is Lessee of ye Plte They must Give a Lett. of Attorny to some person to enter & Seal a Lease on ye premises (for a Corporation cant make an Attorny without deed) So they cant enter & demise upon ye Land without deed in person, nor substitute an Attorn to enter into a Rule for Costs, nor will an Attachmt go agt them for disobeying ye rule — Therefore they are put to make an actual Lease on ye Land and then the Attorny may proceed in ye Comon method that is not allowed by 2 G. 2.

N3. If a Corporation be Aggregate of many, they may Bring ye Demise in Deed without naming ye Christian names of ye Master or Wardens of Corporation; But ye name of Baptism must be inserted if a Sole Corporation, as in case of a Bishop,
where ye Corporation is aggregate ye name Nobly consists in its Character

Where ye Sevl Interests of ye Lessors of ye Plte is not known it is ye best way to proceed in ye 5th way by Sealing a Lease on ye premr, Least they fail in Proving out in their Declns ye Sevl interests wch deed was pleaded pro forma.

In inferior Courts They must proceed in ye 5th way because they cant there make Rules to Confess Lease Entry & ouster.

ſhortly ſet forth in the Affidavit, and alſo in what Manner the Defendant got the Poſſeſſion given to and taken from the Leſſee (who is always made Plaintiff,) how the Declaration was delivered to the Defendant; that the Court may judge of the Regularity of the Proceedings.

Where Half a Year's Rent ſhall be in Arrear, the Landlord having a Right to re-enter for Non-payment, may ſerve a Declaration in Ejectment without a formal Demand or Re-entry, or affix ſuch Declaration on the Door of any demiſed Meſſuage, or notorious Part of the Land, which ſhall be deemed a Legal Service; and on Proof that Half a Year's Rent was due before the Declaration was ſerved, and no ſufficient Diſtreſs on the Premiſſes, the Leſſor ſhall recover. *Stat.* 4 *Geo.* 2.

By Stat. 4 Geo. 2. *Declaration may be fixed on the Door of the Houſe, &c.*

But in moving for Judgment in this Caſe there muſt be an Affidavit that there was Half a Year's Rent in Arrear before Declaration ſerved, that the Leſſor of the Plaintiff had a Right to re-enter, that no ſufficient Diſtreſs was to be found on the Premiſſes, that the Premiſſes were untenanted, or that the Defendant could not be legally ſerved with the Declaration (as the Caſe is) and that a Copy of the Declaration was affixed on the moſt notorious, and what Part of the Premiſſes, or the Court will not give a Rule for Judgment.

Of Purport of Affidavit on Motion for Judgment.

On Payment of Rent and Coſts before Trial, Proceedings to ceaſe.

If the Tenant (in this Caſe) before Trial will either tender to the Plaintiff, or bring into Court, the Rent in Arrear, together with Coſts, all further Proceedings ſhall ceaſe. *Stat.* 4 *Geo.* 2.

In theſe Caſes ſame Time allowed to appear as to Tenant in Poſſeſſion.

In theſe Caſes the like Time is allowed, for the late Tenant or other Perſons claiming Title to the Premiſſes, to appear, as is allowed for the Appearance of Tenants in Poſſeſſion.

Method of getting Poſſeſſion where the Tenant runs away a Year's Rent in Arrear and leaves the Premiſſes untenanted. Stat. 11 Geo. 2.

Landlords being often great Sufferers by Tenants running away in Arrear, and refuſing to deliver up Poſſeſſion, whereby the Landlords have been put to the Expence of recovering Poſſeſſion by Ejectment, by *Stat.* 11 *Geo.* 2. If any Tenant holding at a Rack-Rent, or where Rent reſerved ſhall be three Fourths of the yearly Value, who ſhall be in Arrear for one Year's Rent, ſhall deſert the Premiſſes, and leave the ſame, ſo as no ſufficient Diſtreſs can be had, two Juſtices of the Peace (having no Intereſt in the Premiſſes) at the Requeſt of the Landlord, may go and view the ſame, and affix on the moſt notorious Part of the Premiſſes, Notice in Writing, what Day (at Diſtance of fourteen Days at leaſt) they will return to take a ſecond View thereof, and if on ſuch ſecond View the Tenant, or ſome Perſon on his Behalf, ſhall not pay the Rent in Arrear, and there ſhall be no ſufficient Diſtreſs, the Juſtices may put the Landlord into Poſſeſſion, and the Leaſe thereof to ſuch Tenant as to any Demiſe ſhall be void.

A Niſi Prius *Record in Ejectment.*

Pleas before our Lord the King at Weſtminſter, *of the Term of Saint* Michael *in the twelfth Year of the Reign of our Sovereign Lord* George *the Second, now King of* Great Britain, *and ſo forth,* Roll.

A Niſi Prius *Record in Ejectment.*

Middleſex, *to wit*, Be it remembered, that on *Monday* next after three Weeks from the Day of Saint *Michael* in this ſame Term, before our Lord the King at *Weſtminſter*, came *Peter Noble* by *Anthony Beckwith* his Attorney, and brought here into the Court of our Lord the King there, a certain Bill of his againſt *Fairebeard Swinburn* being in the Cuſtody of the Marſhal, and ſo forth, of a Plea of Treſpaſs and Ejectment of Farm; and there are Pledges of Proſecucuting, *to wit*, *John Doe* and *Richard Roe*; which ſaid Bill follows in theſe Words; *Middleſex*, to wit, *Peter Noble* complains of *Fairebeard Swinburn* being in the Cuſtody of the Marſhal of the *Marſhalſea* of our Lord the King, before the King himſelf; For that, *to wit*, that whereas *Robert Richardſon*, Gentleman, on the twenty-firſt Day of *January* in the eleventh Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, and ſo forth, at the Pariſh of Saint *James's Clerkenwell* in the County of *Middleſex*, had

Demiſed, Granted, and to Farm let to the ſaid *Peter Noble* twenty Meſſuages with the Appurtenances, ſituate lying and being in the ſaid Pariſh of Saint *James Clerkenwell* in the ſaid County of *Middleſex*, to have and to hold the ſaid Meſſuages with the Appurtenances to the ſaid *Peter* and his Aſſigns, from the twenty-fifth Day of *December* then laſt paſt unto the full End and Term of five Years from thence next enſuing, and fully to be compleat and ended; by Virtue of which Demiſe the ſaid *Peter* entered into the ſaid Meſſuages, with the Appurtenances, and was poſſeſſed thereof until the ſaid *Fairbeard* afterwards, *to wit*, on the ſaid twenty-firſt Day of *January* in the eleventh Year aforeſaid, with Force and Arms, and ſo forth, entered on the Meſſuages aforeſaid, with the Appurtenances, in and upon the Poſſeſſion of the ſaid *Peter*, and ejected, drove out and amoved the ſaid *Peter* from his ſaid Farm, his ſaid Term not being yet expired, and thereupon kept out and ſtill keeps out from his ſaid Poſſeſſion the ſaid *Peter* ſo ejected, drove out and moved, and then and there did other Injuries to the ſaid *Peter*, againſt the Peace of the preſent King, and to the Damage of the ſaid *Peter* of ten Pounds; and therefore he brings Suit, and ſo forth.

Not guilty. And the ſaid *Fairbeard* by *Thomas Smith* his Attorney comes and defends the Force, Injury and Damages, and whatever elſe he ought to defend, when and where the Court will take the ſame into Conſideration; and ſaith,

ſaith, that he is in nothing Guilty of the Treſpaſs and Ejectment aforeſaid, as the ſaid *Peter* above complains againſt him; and of this he puts himſelf upon his Country; and the ſaid *Peter* likewiſe: Therefore let a Jury thereupon come before our Lord the King at *Weſtminſter*, on *Tueſday* next after fifteen Days of Saint *Martin*; and who are in no wiſe a Kin either to the ſaid *Peter* or to the ſaid *Fairbeard*, to take Cognizance upon their Oaths of the whole Truth of the Premiſſes, becauſe as well the ſaid *Fairbeard* as the ſaid *Peter* have put themſelves upon that Jury. The ſame Day is given to the Parties aforeſaid at the ſame Place.

Pleas before our Lord the King at Weſtminſter, *of the Term of Saint* Michael *in the twelfth Year of the Reign of our Sovereign Lord* George *the Second, now King of* Great Btitain, *and ſo forth.*

Middleſex, *to wit*, The Jury between *Peter Noble* Plaintiff by his Attorney, and *Fairbeard Swinburn* Defendant, of a Plea of Treſpaſs and Ejectment of Farm, is reſpited before our Lord the King at *Weſtminſter*, until *Tueſday* next after the *Octave* of Saint *Hilary*, unleſs the King's Right Truſty and Well-beloved Sir *William Lee*, Knight, his Chief Juſtice aſſigned to hold Pleas before the King himſelf, ſhall firſt come on *Wedneſday* the twenty-ninth Day Jurata.

of *November*, at *Weſtminſter-Hall* in the County of *Middleſex* aforeſaid, according to the Form of the Statute in ſuch Caſe made and provided, for Default of the Jurors, becauſe none of them did appear; therefore let the Sheriff have the Bodies of the ſaid Jurors to make the ſaid Jury between the Parties aforeſaid, of the Plea aforeſaid; accordingly the ſame Day is given to the Parties aforeſaid, at the ſame Place.

Proceeding in Ejectment by Original.

As many prefer the Method of Proceeding by Original in this Action, on Account of the Difficulty and Expence the Defendant may be at in obtaining and proceeding on a Writ of Error in Parliament to reverſe the Judgment; I ſhall give ſome few Precedents in that Way.

This is the only advantage by proceeding by original.

The Rule by Conſent is the ſame, only leave out theſe Words [and put in Common Bail] and inſtead of the Word [Bill] ſay [Writ.] *v. fo. 235. for the Rule.*

Iſſue on Declaration by Original, upon two ſeveral Demiſes.

Eaſter *Term in the Eleventh Year of King* George *the Second.*

Iſſue in Ejectment by Original on a double Demiſe.

Berks, *to wit*, *Simon Winch*, late of *Bray* in the County aforeſaid, Gentleman, was attached to anſwer *Thomas Barker* Gentleman, of a Plea, wherefore with Force and Arms, into ſix Meſſuages, ſix Cottages, ſixty Acres of Land, ſixty Acres of Meadow, three hundred Acres of Paſture, and forty Acres of Wood

For 1st Demiſe

X vid. fo. 230 of ut an Ejectm. will Go what not

Decd. in B. R. by Origin.ll on Single Demise

Easter term in the 5th. year of the reign of King Geo. the 2d.

Surrey (to wit) Robert Hidd late of Guilford in the County of Surry Gent. was attached to answer Richd. Rod of a plea wherefore with force & arms into One Messuage One Cottage 3 Barns 3 Stables one Garden 200 acres of land 200 acres of Meadow 200 acres of pasture & 20 acres of wood land with the appurts in Wonersh in the said County which Elizth. Ludlow Spinster had demised to the said Richard Rod for a Term which is not yet expired He entered and ejected him from the said farm & did other injuries to him to the great damage of the said Richard Rod and against the peace of the present King &c. And whereupon the said Richard Rod by Joseph Davis his attorney complains that whereas the said Elizabeth on the 26 Day of March in the 5 year of the reign of our Sovereign Lord George now King of Great Britain &c. at Wonersh aforesaid granted to the said Richard Rod the Tenements aforesaid with the appurts to have and enjoy the said Tenements with the appurts to the said Richd. Rod & his assignes from the said day of March the Annunciation of the blessed virgin Mary then last past unto the full end & Term of 5 years then next ensuing fully to be compleat & ended By virtue of which said Demise the said Richard Rod entered into the said Tenements with the appurts & was thereof possessed And the said Richd. Rod being so thereof possessed the said Robert Hidd afterwards (to wit) the same 26 day of March in the year aforesaid with force & arms &c. entered into the said Tenements with the appurts which the said Elizth. had in form aforesaid demised to the said Richd. Rod for the term aforesaid which is not yet expired and ejected him the said Richd. from his said farm and other wrongs &c. to the great damage &c. and against the peace &c. whereupon he says that he is the worse and hath damage to the value of 20l. and therefore he brings Suit &c.

Mr James Hoult

I am informed that you are in possession or claim title to the premises in this Declaration mentioned or to some part thereof and I being sued in this action as a casual Ejector & having no claim or title to the same Do advise you to appear next — Trinity term in his Majestys Court of Kings Bench Whereof fail not &c. by some attorney of the Court & there & then by rule of the same Court to cause yourself to be made Deft. in my stead otherwise I shall suffer Judgmt. therein to be entered agt. me and you will be turned out of possession.

I am your loving friend

Robert Hidd

23 May 1732.

Wood Land, with the Appurtenances, in the Pariſh of *Bray* in the ſaid County of *Berks*, which *William Yeildall* and *Rebecca* his Wife had demiſed to the ſaid *Thomas* for a Term which is not yet expired, and into ſix other Meſſuages, ſix other Cottages, ſixty other Acres of Land, ſixty other Acres of Meadow, and three hundred other Acres of Paſture, and forty other Acres of Wood Land, with the Appurtenances, in the ſaid Pariſh of *Bray*, which *John Lidgold* the Younger had demiſed to the ſaid *Thomas* for a Term which is not yet expired, he entered, and ejected him the ſaid *Thomas Barker* from his ſaid Farms, and did other Injuries to him, to the great Damage of the ſaid *Thomas*, and againſt the Peace of the preſent King, and ſo forth; and from whence the ſaid *Thomas Barker*, by his Attorney complains, That whereas the ſaid *William Yieldall* and *Rebecca* his Wife, on the firſt of *April* in the Eleventh Year of the Reign of our Sovereign Lord the preſent King of *Great Britain*, and ſo forth, at the ſaid Pariſh of *Bray*, had granted to the ſaid *Thomas* the ſaid ſix Meſſuages, ſix Cottages, ſixty Acres of Land, ſixty Acres of Meadow, three hundred Acres of Paſture, and forty Acres of Wood Land, with the Appurtenances, to have and enjoy the ſaid Tenements, with the Appurtenances, to the ſaid *Thomas Barker* and his Aſſigns, from the twenty-fifth Day of *March* then laſt paſt, unto the full End and Term of five Years thence next enſuing fully to be compleat and ended; by Virtue of which ſaid

For 2d Demiſe

Firſt Demiſe.

ſaid Demiſe, the ſaid *Thomas Barker* entered into the ſaid laſt mentioned Tenements, with the Appurtenances, and was thereof poſſeſſed: And alſo, That whereas the ſaid *John Lidgold*, on the ſaid firſt Day of *April* in the Eleventh Year aforeſaid, at the ſaid Pariſh of *Bray*, had demiſed to the ſaid *Thomas Barker* the ſaid ſix other Meſſuages, ſix other Cottages, ſixty other Acres of Land, ſixty other Acres of Meadow, three hundred other Acres of Paſture, and forty other Acres of Wood Land, with the Appurtenances; To have and enjoy thoſe Tenements, with the Appurtenances, to the ſaid *Thomas* and his Aſſigns, from the ſaid Twenty-fifth Day of *March* then laſt paſt, unto the full End and Term of five ~~Terms~~ Years from thence next enſuing, and fully to be compleat and ended; by Virtue of which Demiſe, the ſaid *Thomas* entered into the ſaid laſt mentioned Tenements, with the Appurtenances, and was thereof poſſeſſed, and being ſo thereof poſſeſſed, and alſo being poſſeſſed of the ſeveral Tenements aforeſaid, with the Appurtenances as aforeſaid, the ſaid *Simon Winch* afterwards, *to wit*, on the ſaid firſt Day of *April* in the Eleventh Year aforeſaid, with Force and Arms and ſo forth, entered into the ſaid Tenements, with the Appurtenances, which the ſaid *William* and *Rebecca* his Wife had in Form aforeſaid demiſed to the ſaid *Thomas Barker* for the ſaid Term firſt above mentioned, which is not yet expired; and into the ſaid Tenements, with the Appurtenances, which the ſaid *John Lidgold* had

Second Demiſe.

had in Form aforeſaid demiſed to the ſaid *Thomas Barker* for the ſaid Term laſt above mentioned, which is not yet expired, and ejected him the ſaid *Thomas Barker* in Form aforeſaid, and other Injuries, and ſo forth, to the great Damages, and ſo forth, and againſt the Peace, and ſo forth; from whence he ſays, that he is injured, and has Damage to the Value of One Hundred Pounds; and therefore he brings Suit, and ſo forth.

Not guilty.

And the ſaid *Simon Winch*, by his Attorney, comes and defends the Force and Injury, when, and ſo forth, and ſays, That he is in nothing guilty of the Treſpaſs and Ejectment aforeſaid, as the ſaid *Thomas* above complains againſt him; and of this he puts himſelf upon the Country; and the ſaid *Thomas* likewiſe, and ſo forth. It is therefore commanded to the Sheriff, that he cauſe to come before our Lord the King, on the Morrow of the Aſcenſion of our Lord, whereſoever, and ſo forth, Twelve, and ſo forth, by whom, and ſo forth, and who neither, and ſo forth, to recognize, and ſo forth, becauſe as well, and ſo forth. The ſame Day is given to the Parties aforeſaid, and ſo forth.

Iſſue.
Venire awarded.

Judgment in Ejectment by Original, againſt the caſual Ejector by Nil Dicit.

And the ſaid (Defendant) by *R. R.* his Attorney, comes and defends the Force and Injury, when, and ſo forth, and ſays nothing in Bar or Preclusion of the Action of the ſaid (Plaintiff) but made Default, by which the ſaid (Plaintiff) remains undefended upon that Occaſion, againſt the ſaid (Defendant) for which

which it is conſidered, that the ſaid (Plaintiff) recover againſt the ſaid (Defendant) his Term yet to come of and in the ſaid Tenements, with the Appurtenances; and upon this the ſaid (Plaintiff) freely here in Court, remits to the ſaid (Defendant) all ſuch Damages, Coſts and Charges, as he the ſaid Plaintiff has ſuſtained by Occaſion of the Premiſſes, *or* as can be adjudged to him in this Behalf. Therefore the ſaid (Defendant) may be free from theſe Damages, Coſts and Charges, and ſo forth; and upon this the ſaid (Plaintiff) prays the Writ of our Lord the King, to be directed to the Sheriff of the County aforeſaid, to cauſe him to have Poſſeſſion of his ſaid Term yet to come of and in the ſaid Tenements, with the Appurtenances; and it is granted to him, returnable, and ſo forth.

Judgment in Ejectment by Non Informatus *in Original.*

And the ſaid (Defendant) by *R. R.* his Attorney, comes and defends the Force and Injury when and ſo forth; and upon this the ſaid (Plaintiff) prays that the ſaid (Defendant) may anſwer his ſaid Declaration, upon which the ſaid Attorney of the ſaid (Defendant) ſays, That he is not informed by the ſaid (Defendant) of any Anſwer to be given for the ſaid (Defendant) to the ſaid (Plaintiff) in the ſaid Plaint, and he ſays not any other Thing thereupon in Bar or Preclusion of the ſaid Action of the ſaid (Plaintiff) by which the ſaid (Plaintiff) remains undefended, upon that Occaſion, againſt the ſaid (Defendant) for which it is conſidered, that the ſaid (Plaintiff) recover againſt the ſaid (Defendant) the Poſſeſſion of his

his ſaid Term yet to come of and in the ſaid Tenements, with the Appurtenances, and his Damages by Occaſion of the ſaid Treſpaſs and Ejectment; but becauſe it is unknown what Damages the ſaid (Plaintiff) has ſuſtained by Occaſion of the ſaid Treſpaſs and Ejectment, It is commanded to the Sheriff, that by the Oaths of Twelve good and lawful Men of his Bailiwick, he diligently inquire what Damages the ſaid (Plaintiff) has ſuſtained, as well by Occaſion of the ſaid Treſpaſs and Ejectment, as for his Coſts and Charges by him about his Suit in this Behalf expended; and that the Inquiſition which, and ſo forth, the Sheriff do make appear from the Day whereſoever, and ſo forth, under his Seal, and ſo forth, and the Seals, and ſo forth. The ſame Day is given to the ſaid Plaintiff, and ſo forth; and upon this the ſaid Plaintiff prays the Writ of our Lord the King, to be directed to the Sheriff of the County aforeſaid, to cauſe him to have Poſſeſſion of his ſaid Term yet to come of and in the ſaid Tenements, with the Appurtenances; and it is granted to him, returnable, and ſo forth.

Inquiry of Damages awarded.

Writ of Poſſeſſion.

GEORGE, &c. To the Sheriff of *S.* Greeting: Whereas *T. W.* late in our Court before Us at *Weſtminſter*, by Bill without our Writ, and by the Judgment of the ſame Court, recovered againſt *J. W.* his Term yet to

Writ of Poſſeſſion.

(If by Origin. Lay. By our Writ and by the Judgt. &c.

to come of and in one Meſſuage, one Garden, *&c.* with the Appurtenances, ſituate, lying, and being in *P.* in your County, which *W. M.* on the firſt Day of *October* in the 8th Year of our Reign demiſed to the ſaid *T.* for a Term of Years not yet expired, *to wit*, from the 28th Day of *September* then laſt paſt, to the full End and Term of five Years thence next enſuing, and fully to be compleat and ended; by Virtue of which Demiſe, the ſame *T.* entered upon the ſame Tenements with the Appurtenances, and was thereof poſſeſſed, until the ſaid *J.* afterwards, *to wit*, on the ſame firſt Day of *October* in the 8th Year aforeſaid with Force and Arms entered into the ſaid Tenements, with the Appurtenances, and him the ſaid *T.* from his Farm aforeſaid, the ſaid Term then and there not being expired, ejected, drove out and removed, and him the ſaid *T.* hath with-held from his Poſſeſſion thereof, and ſtill doth with-hold, whereof the ſaid *J.* is convicted, as appears to us of Record: Therefore we command you, that without Delay you cauſe the ſaid *T.* to have his Poſſeſſion of his Term aforeſaid yet to come of and in the Tenements aforeſaid, with the Appurtenances, and in what Manner you ſhall have executed this our Writ, do you make appear to Us at *Weſtminſter*, on, *&c.* and have you there this Writ. Witneſs, *&c.*

If by Origin. ſay
" ſhall appear to us in the Roman
" of S. Hil. Trinity where or ſome
" ſhall then be in England ſending
" back to us this our Writ —
" teſtmeſt &c.

3 *Error.*

A Decl.n for the Measne profitts in Ejectm.t.

By Origin.al

Worcester (to wit) J. D. late of W. in y County of G. Yeoman was attached to answer to J. H. of a plea wherefore with force & arms he broke & entered into 3 Messes 500 Acres of Land 200 Acres of Meadow & 200 Acres of pasture with y appurts in T. in y County of Worcester and drove out & removed the s.d J. H. from the possession & occupation of y s.d Tenem.ts & for a long time withheld y s.d J. H. from y possion & occupation of y same (he being so driven out & removed therefrom as above) and the s.d J. D. during all y time afs.d had & rec.d to his own proper use & behoof all y issues & profitts of y s.d Tenem.ts of y yearly value of 200.li and bro.t other injuries upon y s.d J. H. to the great damage of the s.d J. H. and against the peace of our Sovereign Lord y King his Crown & Dignity and whereupon the said J. H. by G. T. his attorney complains that y s.d J. D. on y first day of June in y 5.th year of y reign of his present Majesty with force & arms broke & entered into y s.d 3 Messes 500 Acres of Land 200 Acres of Meadow & 200 Acres of pasture with the appurts in T. in the said County of W. and drove out & removed y s.d J. H. from y possion & occupation of his said Tenem.ts and for a long time (to wit) from y s.d 1 day of June in y 5. year afs.d untill the day of y suing out of y Origin.al writt of y said J. H. withheld the possion & occupation of the said Tenements from y s.d J. H. (he being so driven out & removed as afores.d) And also the said J. D. had & rec.d to his own use all y issues & profitts of the said Tenem.ts of the Yearly value of 200.li during all the time afs.d and bro.t other injurys upon the s.d J. H. to his great Damage and ag.t y peace of our said Sovereign Lord y King his Crown & Dignity Whereupon he saith he is injured and hath damage to the value of 50.li and therefore he brings his Suit &c.

N.B. This Action may be brot either by y plea in y Origin.al Action or by his Lessor. If by y.e plea he need only at y tryal produce his patent of Recovery; If it be brot by Lessor The Title must be proved over again.

Measne profitts to be recovered from y time of Doe's entry Laid in y Decl.n of Ejectment.

Tis not necessary to prove Doe's entry at y Tryal

Error.

A Writ of Error is a Writ of Right, a Remedy at the Common Law, founded upon the Fallibility of Mankind.

Writs of Error on Judgment of Common Pleas, *or inferior Courts, returnable in the Court of* King's Bench.

Where a Judgment is given in the *Common Pleas*, or in any inferior Court of Record, the Party againſt whom the Judgment is given, apprehending himſelf grieved thereby, and that the Judgment is againſt Law, or upon irregular Proceſs, may have a Writ of Error iſſuing out of *Chancery* returnable in this Court.

Stat. 27 Eliz. *as to the Juriſdiction of the* Exchequer *Chamber.*

An erroneous Judgment given in this Court, was reverſible only in Parliament, till the Statute of the 27th of *Elizabeth*, whereby upon any Judgment given in the *King's Bench* in Debt, Detinue, Covenant, Account, Action upon the Caſe, *Ejectione firmæ* or Treſpaſs, firſt commenced there, (where the King is not a Party) a Writ of Error may be directed to the Juſtices of the Common Bench, and Barons of the *Exchequer*, or any ſix of them, (being of the Degree of the Coif) who ſhall reverſe or affirm ſuch Judgment, other than for Error concerning the Juriſdiction of the *King's Bench*, or want of Form in any Writ, Return, Plaint, Bill, Declaration or other Proceeding, and after Reverſal or Affirmance, the Record ſhall be remanded, that the Court of *King's Bench* may proceed thereupon.

Yet

Error from the Exchequer *Chamber lies in Parliament.*

Yet after ſuch Reverſal or Affirmance, the Party who finds himſelf grieved, may ſtill ſue in Parliament as before.

When Suit by Original, Error muſt be in Parliament.

Where the Suit is by Original, a Writ of Error lies in Parliament only, and not elſewhere, as not being firſt commenced in the Court of *King's Bench*, but in another Court, *viz.* the *Chancery*.

The like where Action Qui tam.

In an Action *Qui tam* upon a Statute where the King is to have a Part, Error lies only in Parliament.

Bail cannot have a Writ of Error in the Exchequer *Chamber.*

Bail cannot have a Writ of Error in the *Exchequer* Chamber, by the Statute of 27 *Eliz. c.* 8. See *Cro. Car.* 300.

Error lies not in the Exchequer *Chamber upon a Judgment by* Sci. Fa.

Error does not lie in the *Exchequer* Chamber upon a Judgment upon a *Sci. Fa.* only in the *King's Bench*, becauſe it is *Caſus omiſſus* out of the Statute of Queen *Elizabeth*, which gave Writs of Error returnable in the *Exchequer* Chamber upon Judgments recovered in the *King's Bench* by Bill.

No Writ of Error to be brought above 20 Years after Judgment, &c.

No Fine, Common Recovery or Judgment, in any real or perſonal Action, ſhall be reverſed for Error, unleſs the Writ of Error be brought and proſecuted with Effect within twenty Years. 10 & 11 *W.* 3. *c.* 14.

Writ of Error a Superſedeas.

A Writ of Error is in Judgment of Law a *Superſedeas*, until the Errors are examined, affirmed or reverſed.

As ſoon as allowed.

The Writ is a *Superſedeas* from the Time of the Allowance, and that is Notice of itſelf; but if the Defendant have Notice before the Allowance, it is from the Time of

that Notice a *Superſedeas*. But though the Allowance is Notice of itſelf *quoad* to ſuperſede the Execution, yet to bring the Attorney into Contempt, he muſt have had Notice.

As to an Execution not executed:

If the Writ of Execution be executed before a Writ of Error allowed or Notice, it may be returned afterwards. The utmoſt Length of Time the Law allows for executing, is the Day whereon the Writ is returnable, and it is not executable any longer that Day than while the Court ſits. So long as it is executable but not executed, the Allowance of a Writ of Error is a *Superſedeas*, but not afterwards. *Salk.* 321.

Q. as to the Fraction of a Day.

Error in Exchequer *Chamber on Judgment by Original* in Superſedeas.

A Writ of Error being brought in the *Exchequer* Chamber, of a Judgment by Original *in Banco Regis*, is merely void, and no *Superſedeas* of Execution.

Banco Regis *void, and no*

On what Judgment Error ſhall be no Superſedeas *without Bail; by Stat.* 3. Jac. 1. c. 8.

But by Statute 3 *Ja.* 1. *c.* 8. Execution ſhall not be ſtayed upon any Writ of Error, for reverſing any Judgment in any Action or Bill of Debt, upon any ſingle Bond for Debt, or upon any Obligation with Condition for the Payment of Money only, or upon any Action or Bill of Debt for Rent, or upon any Contract, unleſs the Perſon ſuing ſuch Writ of Error ſhall with two ſufficient Sureties, ſuch as the Court ſhall allow of, be bound by Recognizance in double the Sum recovered, to proſecute the Writ of Error with Effect, and pay (if Judgment affirmed) all Debts, Damages and Coſts adjudged on former Judgment, and

all Coſts and Damages to be awarded for delaying Execution.

On what by Stat. 13 Car. 2.

And by the 2d Stat. 13 *Car.* 2. *c.* 2. § 9. No Execution ſhall be ſtayed by Writ of Error, after Verdict and Judgment thereon, in any Action of Debt upon 2 *Ed.* 6. for not ſetting out of Tithes, Action upon the Caſe upon Promiſe for Payment of Money, Action *ſur Trover*, Covenant, Detinue and Treſpaſs, unleſs ſuch Recognizance as by Stat. 3. *Jac.* be firſt acknowledged.

On what by Stat. 16, 17 Car. 2.

And by Stat. 16 and 17 *Cha.* 2. *c.* 8. § 3. No Execution ſhall be ſtayed by Writ of Error, after Verdict and Judgment, in any perſonal Action, unleſs ſuch Recognizance be firſt acknowledged; nor upon any Judgment after Verdict in Dower or *Ejectione firmæ*, unleſs the Plaintiff in Error ſhall become bound, *&c.* But Writs of Error, brought by Executors and Adminiſtrators, popular Actions, Actions on penal Laws (except on 2 *Ed.* 6.) Indictments, Preſentments, Informations and Appeals are excepted.

In Dower or Ejectment, the Plaintiff in Error his own Recognizance is ſufficient.

Two laſt Acts relate only to Judgments on Verdicts.

Note; Theſe two laſt Acts relate only to Writs of Error brought on Judgment after Verdict.

No Bail on Writs of Error from inferior Courts.

Writs of Error out of inferior Courts ſhall in all Caſes be *Superſedeas's* without putting in Bail, they being omitted out of the above Statutes.

Nor upon Judgment on Bond for Performance of Covenants, or a Bail-Bond.

There is no Bail to be put in upon bringing a Writ of Error upon a Judgment in an Action of Debt upon Bond conditioned for Performance of Covenants, or upon a Bail

Bail-Bond: But where Bail is required to a Writ of Error upon a Judgment, in an Action of Debt upon a Bond, the Bond muſt be for the Payment of Money only, and that is by the very Words of the Statute.

The Condition muſt be upon Record.

If an Action of Debt be brought upon a Bond to perform Covenants, and there is Judgment by Default, without craving *Oyer* of the Condition, there upon a Writ of Error brought, the Plaintiff in Errors muſt put in Bail, becauſe it doth not appear to the Court upon the Record, that the Condition was for Performance of Covenants.

Executor or Adminiſtrator bringing Error on Judgment de Bonis Propriis, *muſt put in Bail.*

If Judgment be againſt an Executor or Adminiſtrator *de bonis Propriis*, and he brings a Writ of Error, he muſt put in Bail in ſuch Caſes, as required by the above Statutes, and pay Coſts if Judgment be affirmed; but if the Judgment be *de Bonis Teſtatoris* only, he ſhall neither put in Bail nor pay Coſts.

Upon Error in Parliament, of Judgment affirmed in King's Bench, *new Bail required.*

If on a Judgment in the *Common Pleas*, a Writ of Error brought in this Court, Bail put in according to the Statute, and Judgment affirmed, a Writ of Error be brought in Parliament, the Party muſt give a new Recognizance; for the firſt Recognizance does not include Payment of Coſts to be aſſeſſed in the Houſe of Lords. *Salk.* 97.

Bail cannot ſurrender Plaintiff in Error.

Bail on a Writ of Error cannot ſurrender their Principal in Diſcharge of themſelves, for the Condition of the Recognizance is, that the Plaintiff in Error ſhall proſecute his Writ of Error with Effect, and if

Judgment be affirmed, ſhall ſatisfy and pay the Debt, Damages and Coſts recovered, together with ſuch Coſts as ſhall be awarded by Occaſion of the Delay of Execution, or elſe that they (the Bail) ſhall do it for him.

How to ſue out a Writ of Error.

To obtain a Writ of Error, you muſt apply to the Curſitor of the County wherein the Action is laid, and he will make out the Writ for you. You write a Precipe or Note of Inſtructions for the Curſitor, according to the Nature of the Caſe, in the following Manner;

Precipe.

London. Writ of Error for *William Cave*, at the Suit of *Ferdinando Hoare*, on a Judgment in Caſe, given in the Court of *King's Bench*, by Bill.

Dated Ret.

How to get Writ of Error allowed.

When you have got the Writ of Error from the Curſitor, you carry it to the Clerk of the Errors of that Court in which the Judgment was given, and pay him for the Allowance of it, and he will give you a Notice in Writing, to be delivered to the Attorney on the other Side, ſignifying the Allowance of the Writ of Error, which Notice you ſhould deliver immediately.

Writ of Error in the Exchequer *Chamber to be immediately delivered to the Clerk of the Errors.* 16 Car. 2. Cap. 16. Sect. 2.

All Writs of Error, returnable before the Juſtices of the *Common Pleas*, and Barons of the *Exchequer* in the *Exchequer* Chamber, ſhall be immediately delivered to the Clerk of the Errors for the Time being, and no one ſhall be hindered from ſuing out

out Execution by Pretence of any ſuch Writ of Error, until the Writ ſhall be delivered to the Clerk of the Errors. *Paſ.* 36 *Car.* 2.

And Bail (if required) within four Days.

And in Caſes where Special Bail is required, unleſs the Plaintiff, upon ſuch Writ of Error, ſhall within four Days after the Delivering the Writ to the Clerk of the Errors put in Bail according to Law, the Defendant may proceed to Execution, notwithſtanding ſuch Writ. *Paſ.* 16. *Paſ.* 36 *Car.* 2.

Notice to be immediately given of Bail put in, and if not excepted againſt in 20 *Days, to be allowed.*

Every Attorney of the Court who ſhall proſecute any Writ of Error to reverſe any Judgment obtained in this Court, in which ſpecial Bail ought to be put in, ſhall immediately after putting in ſuch Special Bail give Notice thereof to the Defendant in the Writ of Error or his Attorney; and if ſuch Defendant ſhall not except againſt the Bail within 20 Days next after Notice thereof given to him or his Attorney, then ſuch Bail ſhall be allowed. *Mich.* 5 *W.* & *M.*

Bail to juſtify, or better Bail within four Days after Rule.

Aliter Execution.

The Exception againſt the Bail ſhould be entered in the Clerk of the Errors Book, and Notice given to the Plaintiff in Error, and alſo a Rule for better Bail, had of the Clerk of the Errors; and if the Bail do not juſtify, or better Bail be put in within four Days after Notice of the Rule the Plaintiff in the Action may ſue out Execution; but the Writ of Error remains ſtill, and the Plaintiff in Error may proceed thereupon. It is only the *Superſedeas* to the Execution that is taken away.

On Verdict in Ejectment Plaintiff in Error may be Bail himself.

On a Writ of Error after Verdict in Ejectment, the Plaintiff in Error's own Recognizance is ſufficient, (See *Stat.* 16 & 17 *Car.* 2. *c.* 8.) without any further Surety. But the Recognizance ought to be in double the Value of one Year's Rent, and he ought to be examined if he be worth ſo much.

Rule to tranſcribe.

On the Allowance of the Writ of Error, and putting in Bail (where Bail is required,) the Defendant in Error may have a Rule from the Clerk of the Errors for the Plaintiff to certify or tranſcribe the Record, which if he does not by the Time appointed in the Rule, a *Nolle Proſequi* may be entered.

What Time the Clerk of the Errors takes to tranſcribe.

If a Writ of Error brought on a Judgment given in the Court of *Common Pleas* be returnable the firſt Return of a Term, the Clerk of the Errors takes the whole Term to tranſcribe the Record, and does not bring in the Tranſcript till the laſt Day of that Term; and if the Writ of Error be returnable on any other Return in the Term, the Clerk takes the whole Vacation to tranſcribe, and brings in the Tranſcript on the firſt Day of the ſubſequent Term.

Plaintiff in Error does not enter the Tranſcript, Defendant may.

If the Plaintiff in Error does not enter the Tranſcript on Record the ſame Term it is brought into the Office, the Defendant may.

The

The Party, who firſt takes the Tranſcript out of the Office, ought to keep it no longer than till he has made a Copy of it, and then to bring it back, and get his Name diſcharged out of the Book, that the other ſide may be able to make a Copy of it likewiſe.

Tranſcript to be kept no longer than while Copy made.

On a Writ of Error returnable in this Court; as ſoon as the Tranſcript is brought into the Office of the Chief Clerk, and entered in the Book kept for that Purpoſe, the Defendant in Error may make out a *Scire Facias, Quare Executionem non.*

Sci. Fa. Quare Executionem non, *on Tranſcript being brought in.*

GEORGE the Second, by the Grace of God, King of *Great Britain, France* and *Ireland*, Defender of the Faith, and ſo forth, To the Sheriff of *Middleſex*, Greeting: Whereas *Marmaduke A.* lately in our Court, before Sir *Edward N.* Knight, Sir *J. P.* Knight, and Sir *John P.* Knight, our Juſtices of the Bench at *Weſtminſter*, by our Writ, and by the Judgment of the ſame Court, recovered againſt *Michael A.* of the Pariſh of Saint *Paul Covent Garden* in the County of *Middleſex*, Gentleman, two hundred Pounds for Debt, and ſixty Shillings for his Damages, which he had ſuſtained as well by Occaſion of the detaining of that Debt, as for his Coſts and Charges by him about his Suit in that Behalf expended; whereof the ſaid *Michael* was convicted, as by the Inſpection of the Record and Proceſs thereon, which we lately cauſed to come in our Court before us, for certain Cauſes concerning Error, appears to

Sci. Fa. Quare Executionem non *in Debt, on Judgment, removed out of the Court of* Common Pleas *by Writ of Error in the* King's Bench.

Us from Record; And now on Behalf of the ſaid *Marmaduke* in our ſaid Court before Us, We have been informed, that although the ſaid Judgment be given in Form aforeſaid, yet Execution for the ſaid Debt and Damages ſtill remains to be made to him; whereupon the ſaid *Marmaduke* hath prayed Us, that a proper Remedy may be provided for him in this Caſe; And we, being willing that what is Juſt ſhould be done on this Occaſion, Command you, that by good and lawful Men of your Bailiwick, you make known to the ſaid *Michael* that he be before Us, from the Day of wheresoever We ſhall then be in *England*, to ſhew if any Thing he has or knows to ſay for himſelf, why the ſaid *Marmaduke* ought not to have his Execution againſt him for the ſaid Debt and Damages, according to the Force, Form and Effect of the ſaid Recovery, if he ſhall think it expedient, and ſo forth; and further to do and receive what our ſaid Court before Us ſhall then and there conſider of him in this Behalf; and have you there the Names of thoſe by whom you ſhall make known to him, and this Writ. Witneſs, *&c.*

Another on a Judgment in an inferior Court.

GEORGE the Second, by the Grace of God, King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, and ſo forth, To the Mayor and Bailiffs of the Town of *North'ton*, Greeting: Whereas *Peter L.* in our Court of the Town aforeſaid,

ſaid, before you without our Writ, and by the Judgment of the ſame Court, recovered againſt *Francis S.* Eſquire, thirty-ſeven Pounds ſix Shillings and nine Pence for his Damages, which he ſuſtained as well by Occaſion of the not performing of certain Promiſes and Undertakings lately made to the ſaid *Peter L.* by the ſaid *Francis S.* as for his Coſts and Charges by him about his Suit in that Behalf expended, whereof the ſaid *Francis S.* was convicted, as by Inſpection of the Record and Proceſs thereupon, which We have lately cauſed to come in our Court before Us, for certain Cauſes concerning Error, appears to Us on Record: And now on the Behalf of the ſaid *Peter L.* in our ſaid Court before Us, We have been informed, that although the ſaid Judgment was given in Form aforeſaid, yet Execution for the ſaid Damages ſtill remains to be made to him; whereupon the ſaid *Peter L.* hath humbly intreated Us for a proper Remedy to be provided for him in this Behalf; And we, being willing that what is Juſt ſhould be done in this Behalf, Command you, that by good and lawful Men of the Bailiwick of the Town aforeſaid you make known to the ſaid *Francis S.* that he be before Us from the Day of wheresoever, and ſo forth; to ſhew if any Thing he has or knows to ſay for himſelf, why the ſaid *Peter L.* ought not to have his Execution againſt him for the ſaid Damages, according to the Force, Form and Effect of the ſaid Recovery, if he ſhall think it expedient

dient, and ſo forth; and further to do and receive what our ſaid Court before Us ſhall then and there conſider of him in this Behalf; and that you have there the Names of thoſe by whom you ſhall make known to him, and this Writ. Witneſs, and ſo forth.

When Sci. Fa. may bear Teſte. If the Tranſcript be brought into the Office before the Eſſoin-Day of any Term, the *Scire Facias* may bear Teſte the laſt Day of the preceding Term; and if brought in within the Term, it may bear Teſte the firſt Day of that Term.

And how made returnable. On a Writ of Error from an inferior Court, where the Proceedings were by Bill, the Return of the *Scire Facias*, *Quare Executionem non*, and all ſubſequent Proceedings muſt be on a Day certain, where by Original on a General Return.

How returnable in Error from Palace Court. Where the Writ of Error is on a Judgment given in the Palace Court, the *Scire Facias* muſt be returnable on a General Return, the Writs in that Court being returnable on their Court-Days, and not on ſuch Return-Days as in the Court of *King's Bench*.

On Return Rule for Judgment. On a *Scire Feci* returned, or a *Nihil* on two *Scire Facias's*, the Defendant in Error may give a Rule for Judgment, which is out in four Days, and he is not bound to give Notice of it, or to call for an Aſſignment of Errors.

And

And the Plaintiff in Error ſhall not have Oyer of this *Scire Facias*, or plead any Thing to it but an Aſſignment of Errors.

No Oyer of or Plea to this Sci. Fa. *but Aſſignment of Errors.*

If on Return of *Scire Facias* and Expiration of the Rule thereon, the Plaintiff in Error does not aſſign Errors, the Defendant muſt enter the *Scire Facias*, if one, and a *Scire Feci* of the Term in which the *Scire Facias* was returnable; and if two, and a *Nihil* of the Term in which the firſt *Scire Facias* was returnable, with an Award of the ſecond, and of Execution, and may thereupon ſue out any Execution againſt the Plantiff in Error's Body or Goods, or on a *Non eſt Inventus* returned may ſue out a *Scire Facias* againſt his Bail.

How to enter Sci. Fa. *where no Errors aſſigned.*

And proceed againſt Plaintiff or his Bail.

But on this Judgment on the *Scire Facias* the Defendant in Error has no Coſts allowed him; and if he would obtain the Coſts he has been put to by the Writ of Error, he muſt *Non-proſs* it, for which Purpoſe he muſt have a Rule from the Secondary for the Plaintiff to aſſign Errors *de Recordo*, and muſt ſerve the Attorney of the Plaintiff in Error with a Copy of it; and then if the Plaintiff does not aſſign Errors by the Time given by the Rule, the Defendant may Sign his *Non-proſs*, and have Coſts according to the Statute.

Of Non-proſſing a Writ of Error.

3 H. 7. 10.

And afterwards, *to wit*, on *Wedneſday* next after three Weeks, from the Day of the Holy *Trinity* in this ſame Term, before our Lord the King at *Weſtminſter*, the ſaid *George*

Non-Proſs *after two* Sci. Fa's. *in Error on Ejectment.*

George Davery comes in his proper Perſon, and ſays, that Execution of the ſaid Judgment ſtill remains to be made to him; therefore he prays the Writ of our Lord the King to be directed to the Sheriff of the ſaid County of *Surrey*, to warn the ſaid *Elizabeth* to be before our Lord the King, whereſoever, and ſo forth, to ſhew if any Thing ſhe has or knows to ſay for herſelf, why the ſaid *George* ought not to have his Execution thereof againſt her, as well of the Poſſeſſion of his ſaid Term yet to come of and in the ſaid Tenements, with the Appurtenances, as of his Damages, Coſts and Charges, according to the Force, Form and Effect of the ſaid Recovery; and it is granted to him, and ſo forth; By which it is Commanded to the Sheriff of *Surrey*, that by good and lawful Men of his Bailiwick he make known to the ſaid *Elizabeth*, that ſhe be before our Lord the King from the Day of Saint *Michael* in three Weeks, whereſoever, and ſo forth, to ſhew in Form aforeſaid; If, and ſo forth; And further, and ſo forth. The ſame Day is given to the ſaid *George*, and ſo forth: At which Day before our Lord the King at *Weſtminſter*, the ſaid *George* comes in his proper Perſon; And the Sheriff of the ſaid County of *Surrey*, *to wit*, *A. B.* Eſq; returns that the ſaid *Elizabeth Arnold* has nothing in his Bailiwick by which he can make known to her, nor is ſhe found in the ſame, and ſhe does not come: Therefore, as before, it is Commanded to the Sheriff

Firſt Sci. Fa.

Returned Nihil.

Alias Sci. Fa.

Sheriff of *Surrey*, that by Good, and ſo forth, he make known to the ſaid *Elizabeth*, that ſhe be before our Lord the King on the *Octave* of Saint *Martin*, whereſoever, and ſo forth, to ſhew in Form aforeſaid; If, and ſo forth; And further, and ſo forth. The ſame Day is given to the ſaid *George*, and ſo forth: At which Day before our Lord the King at *Weſtminſter*, the ſaid *George* comes in his proper Perſon; And the Sheriff of the ſaid County of *Surrey*, *to wit*, the ſaid *A. B.* Eſq; likewiſe returns, that the ſaid *Elizabeth* has nothing in his Bailiwick by which he can make known to her, nor is ſhe found in the ſame; and the ſaid *Elizabeth*, although on the fourth Day of the Plea ſolemnly required, came not, but made Default; and upon this the ſaid *George* ſays, that the ſaid *Elizabeth* hath not yet aſſigned Error or Errors in the ſaid Record and Proceedings: Therefore a Day is given to the ſaid Parties before our Lord the King at *Weſtminſter*, until *Wedneſday* next after fifteen Days from the Day of Saint *Martin*, *to wit*, to the ſaid *Elizabeth* to aſſign Error or Errors in the ſaid Record and Proceedings, and ſo forth: At which Day before our Lord the King at *Weſtminſter*, the ſaid *George* comes in his proper Perſon, and the ſaid *Elizabeth* at that Day ſolemnly required came not, but likewiſe made Default; nor has ſhe further proſecuted the ſaid Writ of Error againſt the ſaid *George*: It is therefore conſidered, that the ſaid *Elizabeth* be in Mercy, and that the ſaid

Nihil returned.

Day appointed to aſſign Errors.

Plaintiff in Error makes Default.

Judgment.

ſaid *George* have therefore his Execution againſt the ſaid *Elizabeth*, as well of the Poſſeſſion of his ſaid Term yet to come of and in the ſaid Tenements with the Appurtenances, as of his ſaid Damages, Coſts and Charges, according to the Force, Form and Effect of the ſaid Recovery, and ſo forth: And it is further conſidered, that the ſaid *George* recover againſt the ſaid *Elizabeth* five Pounds ten Shillings adjudged to the ſaid *George* by the Court of our Lord the King now here, according to the Form of the Statute, and ſo forth, for his Damages, Coſts and Charges, which he ſuſtained by Occaſion of the delaying the Execution of the ſaid Judgment, by Pretence of Proſecuting the ſaid Writ of Error; and that the ſaid *George* likewiſe have thereupon Execution, and ſo forth.

Coſts.

No Damages where Execution is executed, and why.

If the Defendant in the Original Action does not bring his Writ of Error before Execution executed, the Plaintiff ſhall not have his Damages and Coſts, either on Nonſuit, Diſcontinuance or Judgment affirmed, becauſe the Writ of Error is not then *in Dilatione Executionis.*

One Execution for Debt and Coſts in Original Action, and for Coſts in Error.

If the Defendant in Error has not taken out Execution on the Judgment entered on the *Scire Facias*, he may have one Execution for the Debt and Coſts, or Damages in the Original Action, and alſo for the Coſts allowed on the *Non-proſs.*

On the Rule to assign Errors *de Recordo*, if the Plaintiff do assign Errors (as he may) notwithstanding Execution of the Judgment on the *Scire Facias* has been really executed; and the Judgment be reversed, he shall have Restitution.

If Plaintiff assign Errors on the Rule, and the Judgment be reversed, he shall have Restitution.

Assignment of Errors must be always signed by Counsel, and a Copy delivered to the Attorney for the Defendant in Error.

Errors to be signed by Counsel.

If the Errors be general, the Defendant in Error may immediately plead *in Nullo est Erratum.*

If general Errors, Defendant may immediately join.

General Errors assigned, and want of Original, and Warrants of Attorney, to which *in Nullo est Erratum* pleaded, Plaintiff moved to amend the Errors assigned, but denied.

After in Nullo est Erratum, *it is never admitted to amend General Errors.*

After *in Nullo est Erratum* (which joins the Issue) is pleaded, neither the Defendant nor the Plaintiff in Error can alledge Diminution without Leave of the Court; but the Court may, if they think fit, order a *Certiorari ad Informandum Conscientiam Curiæ*, and that to affirm, but not to reverse a Judgment.

Diminution after in Nullo est Erratum *cannot be alledged without Leave.*

In Record out of inferior Courts no Diminution can be alledged, and the Court must take them as they find them.

No Diminution in Records out of inferior Courts.

If the Plaintiff in Error prays a *Certiorari*, the Defendant may enter a Rule to return the *Certiorari*, and serve the Plaintiff's Attorney with it.

Defendant may have a Rule to return Certiorari *prayed by Plaintiff.*

And

If Certiorari *not returned, Defendant may join in Error.*

And if the *Certiorari* be not returned and filed by the Time given by the Rule, the Defendant in Error may plead *in Nullo eſt Erratum*, and enter a *Non miſit Breve* on Record, taking no Notice of the Diminution.

Where want of Original is aſſigned, the Plaintiff in Error muſt ſue out a Certiorari.

If Want of Original be aſſigned for Error, and the Plaintiff in Error does not ſue out a *Certiorari*, the Courſe is for the Defendant in Error to go to the Maſter of the Office, and get a Rule for the Plaintiff in Error to return his *Certiorari*; and in Caſe he does not get it done accordingly, the Aſſignment of Errors ſignifies nothing. *Salk.* 267.

Defendant may have a ſecond Certiorari *after a wrong Original returned on the firſt.*

If a Record below be of *Eaſter* Term, and Want of Original be aſſigned for Error, the Defendant may alledge Diminution, and then a *Certiorari* goes to the *Cuſtos Brevium* to certify an Original of *Eaſter* Term, that being the Term of which the *Placita* is; if then the *Cuſtos Brevium* certifies a variant Original, or that there is no Original, the Defendant may come and ſuggeſt, before *in Nullo eſt Erratum* pleaded, that there is an Original of another Term, *viz. Hilary* or *Michaelmas*, and then there muſt go a *Certiorari* to the *Cuſtos Brevium* to certify that, and another to the Chief Juſtice of the *Common Pleas* to certify the Continuances. Alſo if the *Cuſtos Brevium* certify a wrong Original of the ſame Term the *Placita* is of, it has been held the Defendant may ſuggeſt there is a right Original even of that very Term; and when both are before the Court

the Court will apply the Record to that which is a good Original.

When the *Certiorari* is returned and filed, the Defendant may join *in Nullo eſt Erratum.*

When Certiorari *returned and filed, Defendant may join.*

After Iſſue is joined, either the Plaintiff or Defendant may move for a *Concilium*, and ſet down the Cauſe with the Clerk of the Papers.

Either Side may move for a Concilium.

Two Days at leaſt before the Cauſe comes on for Argument, Paper Books ſhould be delivered to the Judges; but by Rule *Paſ.* 2 *Jac.* 2. they are directed to be delivered 4 Days before the Argument.

When Paper Books to be delivered to the Judges.

The Plaintiff in Error ſhould give Books to the Chief Juſtice, and the firſt Puiſne Judge, and the Defendant ſhould give Books to the other two Judges. *Mich.* 17 *Car.* 1.

Plaintiff delivers to the chief and firſt Puiſne Judges, Defendant to the other two Judges.

The Court will not hear the Argument, unleſs the Books be delivered to all the Judges; therefore the Attorney, who expects that the Judgment of the Court will be in his Client's Favour, ſhould deliver all the Books, eſpecially as he will be allowed in Coſts for thoſe Copies he makes for the other Side. See ſame Rule.

Party who expects Coſts, ſhould deliver all the Books.

On Error in the *Exchequer* Chamber, the Attorney for the Plaintiff in Error, if he deſigns to argue the ſame, muſt give ten Days Notice thereof to the Clerk of the Errors of that Court; and the Attorney for the Plaintiff

Error in Exchequer *Chamber*, 10 *Days Notice of Argument to Clerk of Errors there.*

Plaintiff to deliver Books to Judges of Common Pleas; *Defendant to Barons of* Exchequer.

tiff ſhall deliver four Books to the Judges of the *Common Pleas*, and the Attorney for the Defendant, four Books to the Barons of the *Exchequer*, four Days before the Argument. *Paſ.* 33 *Car.* 2.

Stat. 5 Geo. 1. *Of Amendments.*

By Statute 5 *Geo.* 1. *c.* 15. all Variances and Defects, which vary the Writ of Error from the Record, are amendable. No Coſts is to be paid on ſuch Amendments.

Where the Plaintiff brings Error, and the Court reverſe, they give a new Judgment; otherwiſe if the Defendant brings Error.

Where in *Communi Banco* Judgment is for the Plaintiff, and the Defendant brings Error, there ſhall only be Judgment to reverſe the former Judgment, for the Suit is only to be eaſed of that Judgment; but where the Plaintiff brings Error, the Judgment ſhall not only be a Reverſal, but the Court ſhall give ſuch Judgment, as the Court below ſhould have done; for the Writ of Error is to revive the firſt Cauſe of Action, and to recover what he ought to have recovered by the firſt Suit wherein erroneous Judgment was given. *Salk.* 262.

Writ of Error abates by the Death of the Plaintiff in Error, but not by Death of Defendant.

A Writ of Error ſhall abate by the Death of the Plaintiff in Error, but not by the Death of the Defendant.

When by Death of Plaintiff.

But as to the Death of the Plaintiff in Error, it is ſaid, If he dies before Errors are aſſigned, the Writ abates, and the Defendant may proceed to revive the Judgment by *Scire facias* againſt his Executor; but in Caſe he dies after Aſſignment of Errors and Iſſue thereon, the Defendant may proceed

x If a Judgt. be affirmed on a writ of Error, altho' ye 1st. day is past an Execution may issue without a Sci. fa. any time till after a Year & day after ye affirmance notwithstand. ye Judgt. is in and Court, for ye affirmance is but vpon a new Judgt. 1. Roll A. 899. 5. R. 88 The same on a Nonsuit in a writ of Error, or if ye writ of Error be discontinued 1 Roll Abr. 899.

proceed to get the Judgment affirmed; but then it must be revived.

How to proceed when Defendant dies.

The Death of the Defandant does not abate the Writ either before or after Assignment of Errors, but the Plaintiff in Error must, before he can proceed to a Reversal, sue out a *Scire facias ad audiendum Errores* against his Executors. If the Writ of Error was brought merely for Delay, 'tis probable the Plaintiff will not be in such a Hurry, and the Executor then should sue out a *Scire facias Quare executionem non*, and upon that the Plaintiff will be obliged to assign Errors, if Errors were not before assigned; but if Errors were assigned before the Death of the Defendant, the Executor proceeds (as if the Defendant was alive) till the Judgment be affirmed, and then he must revive by *Scire facias.*

Error by four, one dies, Defendant may sue out Execution on suggesting the Death on Record, without Sci. Fa.

Judgment in the *Common Pleas* against four in Trespass, who thereupon bring Error in the *King's Bench*, after the Record certified, one of them dies, the Writ of Error is abated, and the Plaintiff in the Original Action may have Execution on suggesting the Death of the Party upon Record, but he need not sue out a *Scire facias.*[x] See *Salk.* 219.

Where a Scire facias *to bear Errors is not well brought.*

A *Scire facias ad audiendum Errores* is not well brought before the Record of the Judgment be certified into the Court, to reverse which the Writ of Error was brought, and Errors assigned thereupon; for there is no Record in Court to warrant the granting the *Scire facias* before the Record of the Judg-

ment is certified, and Errors thereupon assigned.

Plaintiff in Error heard ex parte, *if Defendant does not appear on* Sci. Fa.

If the Defendant in Error does not appear on the *Scire facias* to hear Errors, the Cause must be set down to be heard by the Court, and the Plaintiff in Error shall be heard *ex parte*.

New Writ of Error where first abated by Act of Plaintiff no Supersedeas.

If a Writ of Error abates by the Act of the Plaintiff in Error, and he sues out a new Writ of Error, such new Writ shall be no *Supersedeas*.

Where Writ of Error abates in Exchequer *Chamber, Judgment is not in* B. R. *without a* Remittitur.

Where a Writ of Error determines in the *Exchequer* Chamber by Abatement or Discontinuance, the Judgment is not again in the *King's Bench*, till there be a *Remittitur* entered, for without such *Remittitur*, it cannot appear to the Court of *King's Bench*, but that the Writ of Error is still pending *in Camera Scaccarii*.

Error tam in redditione Judicii quam in adjudicatione Executionis.

Where Bail may have it.

BAIL may bring a Writ of Error *tam in redditione Judicii quam in adjudicatione Executionis* upon a Judgment recovered against them by *Scire facias*.

It lies not in Camera Scaccarii *on an Award of Execution after Judgment affirmed there.*

On a Judgment for Plaintiff in *King's Bench*, affirmed in the *Exchequer* Chamber, and an Award of Execution in *B. R.* on a *Scire facias* brought by Plaintiff, the Defendant cannot have a Writ of Error in the *Exchequer* Chamber *tam in redditione Judicii quam in adjudicatione Executionis* (*aliter* if

there

there had been no Writ of Error before on the Original Judgment) for the Merits of the firſt Judgment have been examined, and ſuch ſecond Writ is no *Superſedeas*, and Execution ſued out will be no Contempt. See *Salk.* 263.

Writ of Error brought by Bail on Judgment againſt him by *Scire facias* in inferior Court, and it was *tam in redditione Judicii* againſt the Principal, *quam in adjudicatione* againſt the Bail; but it was quaſhed againſt the Principal, and the Bail proceeded to reverſe the Judgment againſt himſelf.

Bail cannot join the Principal with himſelf in a Writ of Error.

Error coram nobis reſiden'.

IF a Judgment given in this Court be erroneous in Matter of Fact only, and not in Matter of Law, a Writ of Error *cor. nobis reſiden.* may be brought in this Court, where the Jndgment was given to reverſe it; but if the Judgment be erroneous in Matter of Law, then a Writ of Error cannot be brought in this Court to reverſe it. Error in Fact, is not the Error of the Judges, and therefore the Reverſing of a Judgment given by them, which is only erroneous in Matter of Fact, is not the Reverſing their Judgment; but it is otherwiſe if the Judgment were erroneous in Matter of Law, for they cannot be thought to reverſe their own Judgments.

If a Judgment in this Court be erroneous in Matter of Fact, Writ of Error lies in the Court to reverſe, but not if in Matter of Law.

Error cor. nobis reſiden. *lies not in the Exchequer Chamber.*

Error *coram nobis reſiden.* lies not in the *Exchequer* Chamber.

Whether a Superſedeas *without Leave of the Court.*

This Writ is allowed in Court by the Secondary, and becauſe none of the Statutes, which oblige the Plaintiffs in Error to put in Bail, extend to this Writ of Error, it is ſaid to be no *Superſedeas* but by Leave of the Court.

But a modern Reporter in a Caſe of *Belt* againſt *Collins*, *Trin.* 9 *Geo.* 1. ſeems to ſay, that a Writ of Error *coram nobis reſiden.* may be allowed by the Secondary in Vacation, and that it is a good *Superſedeas* from the Allowance even without Notice.

Errors to be aſſigned on Motion.

The Way to compel the Plaintiff to aſſign Errors, is by Motion in Court, and he muſt aſſign Errors immediately on Service of the Rule.

How Judgment reverſed on Error in Fact.

On Errors in Fact aſſigned, if found for the Plaintiff on Trial, he muſt move to put the Cauſe in the Paper for Argument, and then upon producing the *Poſtea*, the Court will give Judgment of Reverſal.

Error from Ireland.

Plaintiff to aſſign Errors on Motion.

THE Method of compelling the Plaintiff in the Writ to aſſign Errors, is by Motion in Court, and he will be ordered to aſſign Errors within a Week after Service of the Rule: And if the Plaintiff, his Attorney or Agent, cannot be found, the Court will order that ſticking up the Rule in

Error cannot be brought in the Exchequer Chamber

Error cannot be brought in the Exchequer Chamber

Writ of Error to be allowed by the Secretary in Vacation

Error to be allowed by the Secretary in Vacation

Rule for Writ of Error to be entered as of Term or Day

Rule for Writ of Error to be entered as of Term or Day

Plaintiff in Error to assign Errors or Nonsuit

Plaintiff in Error to assign Errors or Nonsuit

in

in the Publick Office, ſhall be good Service on the Plaintiff in Error.

By like Rule Defendant to join.

And the Plaintiff in Error muſt move the Court for a Rule for the Defendant to join in Errors, and he has four Days to do it in after Service of the Rule.

Muſt be an Affidavit verifying Errors aſſigned.

On an Aſſignment of Errors from *Ireland* there muſt be an Affidavit annexed, verifying the ſame.

If Judgment affirmed, Execution muſt be awarded in Ireland.

If the Judgment is affirmed, the Record is tranſmitted to *Ireland*, and the Court there awards Execution.

Error in Parliament.

How a Writ of Error in Parliament is made returnable.

A Writ of Error that is brought in the Parliament, is made returnable immediately, or upon a Prorogation *ad proximum Parliamentum*, becauſe that Court, during the Seſſion of it, ſits continually and has no Vacation; and it is for the Honour of that High Court to be immediately attended that they may do the ſpeedier Juſtice; the Proceedings there are very expeditious, there being no *Scire facias*; but upon a Motion made in the Houſe by one of the Peers, a Day is appointed for the Plaintiff in Error to aſſign his Errors, and after Iſſue is joined on *In nullo eſt Erratum*, upon another Motion made in Manner aforeſaid, their Lordſhips appoint a Day for the Hearing of the Erorrs; at which Day both Parties muſt attend with their Council; but

neither Party muſt have more than two Counſel to plead for him.

Error lies not from the Court of Exchequer *to the Houſe of Lords.*

Error lies not from the Court of *Exchequer* to the Houſe of Lords, for the *Exchequer* Chamber interpoſes. *Salk.* 511.

Upon Error in Parliament of Judgment affirmed in B.R. *new Bail is required.*

If Error be brought on a Judgment of the Court of *Common Pleas*, returnable *in Banco Regis*, and Bail put in, if the Judgment be affirmed, and Error brought in Parliament, there muſt be a new Recognizance. *Salk.* 97.

Where Judgment reverſed in Parliament, they give the ſame Judgment as the King's Bench *ought to have done.*

Action in the Court of *King's Bench* by Original Judgment for the Defendant, and Error brought in Parliament; if the Parliament reverſe the Judgment, they will give the ſame Judgment as the Court of *King's Bench* ought to have done. *Vide poſtea* Precedents in *Error*.

Audita Querela.

In what Caſe an Audita Querela *lies.*

ANY Perſon bound by Statute or Recognizance, or againſt whom a Judgment is given, that hath a Releaſe, or other Matter in Writiug, or any Matter in Fact whereby he ought to be diſcharged and releaſed, but hath no Day in Court to plead the ſame, ſhall have this Writ, which iſſues out of the *Chancery*, directed to the Judges of this Court, or of the *Common Pleas*; and is in the Nature of a Commiſſion to the Judges to call the Parties before them, hear the Complaint and to do Right.

If

If on a Judgment, in the Court and a Writ of Error brought thereon in the *Exchequer* Chamber, the Plaintiff in the Original Action brings Debt on the Judgment, and recovers a Judgment thereupon, and afterwards the firſt Judgment is reverſed on the Writ of Error, an *Audita Querela* may be brought for Relief againſt this Second Judgment.

If Debt be brought on a Judgment, and Judgment be obtained thereupon, and the firſt Judgment be afterwards reverſed on Writ of Error, Audita Querela *lies.*

If after Judgment againſt the Bail the Judgment againſt the Principal be reverſed or ſatisfied, the Bail may have an *Audita Querela.*

It lies for Bail after the Reverſal of the Judgment againſt the Principal.

If an Action be brought againſt *A.* for a Treſpaſs committed by him *ſimul cum B.* and Judgment be obtained thereupon, and afterwards the Plaintiff releaſe *B.* an *Audita Querela* lies for *A.* on this Releaſe.

Aſſault brought againſt two, Plaintiff releaſes one, Audita Querela *lies for the other.*

If one be taken in Execution and afterwards ſet at Liberty by the Plaintiff, and then taken again upon the ſame Execution, he may bring his *Audita Querela* to be enlarged; for the Execution was diſcharged, and being once diſcharged is diſcharged for ever, and ſuppoſes a Satisfaction.

It lies for one ſet at large on an Execution, and taken again on the ſame.

If at *Niſi Prius* in Treſpaſs a Verdict be found for the Plaintiff, and Damages aſſeſſed, and before the Day in Bank the Plaintiff releaſe to the Defendant all Actions and Demands, and afterwards prays Judgment, and ſues Execution thereupon, the Defendant

It lies upon a Releaſe after Verdict, and before Day in Bank.

dant upon that Releaſe ſhall have an *Audita Querela.*

Where an Audita Querela lies not.

An *Audita Querela* lies not after Judgment upon a Matter which might have been pleaded before; but where the Party was condemned, and had no Day in Court to plead it, an *Audita Querela* lies.

After Award of Execution on a Sci. Fa. *and* Sci. Feci *returned, Defendant cannot have Advantage of Matter pleadable to that; otherwiſe after two* Nihils.

Where a Defendant had Matter which might have been pleaded to a *Scire Facias*, and has loſt the Benefit of that by an Award of Execution upon a *Scire Feci* returned, he is eſtopped for ever, and can never have an Opportunity or Means to let himſelf in to take Advantage of that Matter; but where it is an Award on two *Nihils* returned, he may relieve himſelf by *Audita Querela*; and the Court will ſave him that Trouble, and relieve him, upon Motion, unleſs the Ground of his *Audita Querela* be a Releaſe, or ſome ſuch Matter of Fact as may be proper to be tried.

No Audita Querela *to be allowed but in open Court.*

No Writ of *Audita Querela* for any Cauſe whatever ſhall be allowed but in open Court, and on Motion. *Trin.* 9 *Jac.* 1.

Audita Querela *is no* Superſedeas.

An *Audita Querela* is no *Superſedeas*, and therefore Execution may be taken out, unleſs a *Superſedeas* be ſued forth; and if the *Audita Querela* be founded on a Deed, it muſt be proved in Court before a *Superſedeas* ſhall be granted.

Proceſs in Audita Querela.

If an *Audita Querela* be founded upon a Record, or the Party be in Cuſtody, the Proceſs upon it is a *Scire Facias*; but if it be grounded on a Matter of Fact, or the Party

dant upon that Release shall have an *Audita Querela*.

Where an Audita Querela lies.

An *Audita Querela* lies not after Judgment upon a Matter which might have been pleaded before; but where the Party was overtaken, and had no Day in Court to plead it, an *Audita Querela* lies.

The Award of Execution.

Where a Defendant has Matter which might have been pleaded to a *Scire Facias*, and has left the Benefit of that by An Award of Execution upon a *Scire Fac.* executed, he is stopped for ever, and can never have an Opportunity or Means to help himself in to take Advantage of that Matter; but where it is an Award on *Nihil* returned, he may relieve himself by *Audita Querela*; and the Court will then hear that Trouble, and relieve him, upon Motion, unless the Ground of the *Audita Querela* be a Release, or some such Matter of Fact as may be proper to be tried.

An Audita Querela is to be allowed but in open Court.

No Writ of *Audita Querela* for any Cause whatever shall be allowed but in open Court, and on Motion. *Trin. 9 Jac. 1.*

Audita Querela is to be prohibited.

An *Audita Querela* is an *Supersedeas*, and therefore Execution may be taken out, notwithstanding a *Supersedeas* be sued forth; and if the *Audita Querela* be founded on a Deed, it must be proved in Court before a *Supersedeas* will be granted.

Proof in Audita Querela.

If an *Audita Querela* be founded upon a Record, or else Party be in Custody, the Proceh upon it is a *Scire Facias*, but if it be grounded on a Matter of Fact, or the

Party

Party be not in Cuſtody, and only brought *Quia timet*, the Proceſs is a *Venire* and Diſtreſs infinite.

One in Execution may be bailed on an *Audita Querela*, but muſt procure four Perſons to become Bail for him. *Bail on Audita Querela.*

Bail ſhall not be taken on an *Audita Querela* but in open Court, and by Special Motion. *Trin.* 9 *Jac.* 1. *No Bail taken on* Audita Querela *but in Court, and on Motion.*

The

The Form of the Bail-piece. The Form of the Bail-piece on an *Audita Querela.*

Hilary Term in the Twelfth Year of King *George* the Second.

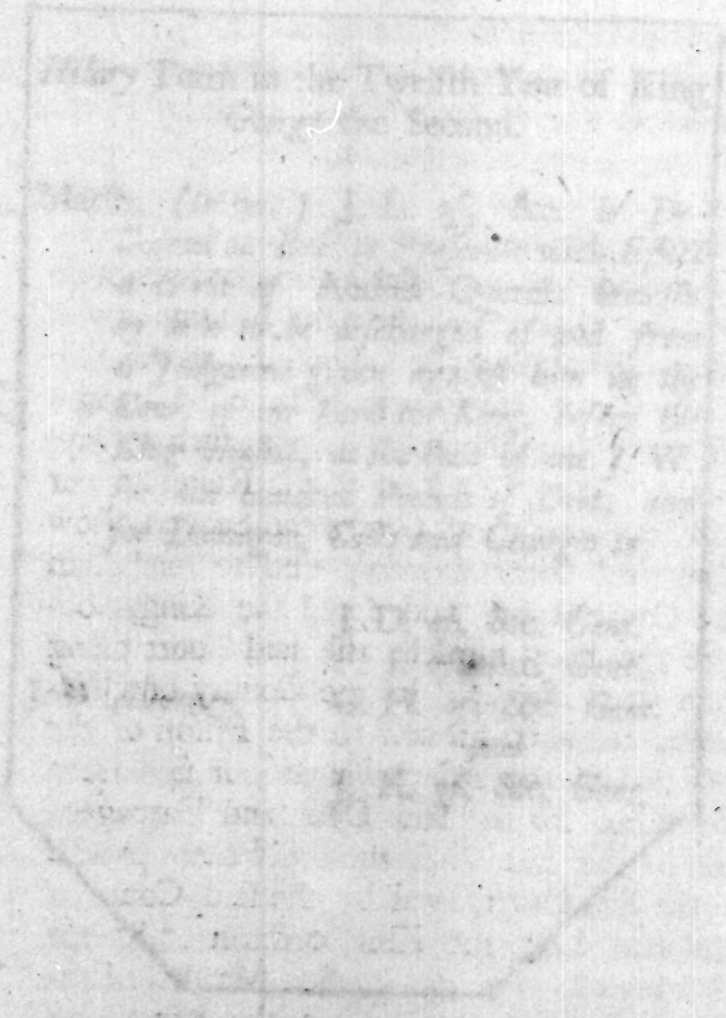
Marſh. *(to wit.)* J. L. *of*, &c. *is Delivered on Bail to Proſecute with Effect a Writ of* Audita Querela *brought by him to be diſcharged of and from a Judgment given againſt him in the Court of our Lord the King, before the King himſelf, at the Suit of one* J. W. *for one hundred Pounds of Debt, and for Damages, Coſts and Charges to*

J. B. *Attorney.*

J. D. *of*, &c. *Gent.*
F. J. *of*, &c. *Gent.*
G. H. *of*, &c. *Gent.*
and
J. K. *of*, &c. *Gent.*

Entry of the Surmiſe and Recognizance on a Writ of Audita Querela.

Our Lord the King gave in Charge to his Juſtices, aſſigned to hold Pleas before the King himſelf, his Writ Cloſe, in theſe Words, *to wit*, *George* the Second, *&c.* (and



(and ſo recite the whole Writ of *Audita Querela.*)

Afterwards, *to wit*, on the Day of in that ſame Term, before our Lord the King at *Weſtminſter*, the ſaid *T. S.* comes in his proper Perſon, being brought to the Bar here, under the Cuſtody of Eſq; Marſhal of the *Marſhalſea* of our Lord the King, and ſays, that he ought not to be farther detained in the ſaid Priſon by Pretence of the ſaid Execution, becauſe he ſays, that after the ſaid Judgment was given againſt him the ſaid *T. S.* at the Suit of the ſaid *T. H.* for the Debt and Damages aforeſaid, he the ſaid *T. S.* (on ſuch a Day) in the Year of the Reign of our ſaid Sovereign Lord *George* the Second, now King of *Great Britain*, and ſo forth, in the Court of our ſaid Lord the King, before the King himſelf, the ſaid Court being then at *Weſtminſter* in the County of *Middleſex*, rendered himſelf to the Priſon of the Marſhal of the *Marſhalſea* of our ſaid Lord the King for the ſaid Debt and Damages; and he the ſaid *T. S.* then and there preſent in the ſaid Court, was by the ſaid Court of our ſaid Lord the King committed to the Cuſtody of then Marſhal of the *Marſhalſea* of our ſaid Lord the King, before the King himſelf, in Execution for the ſaid Debt and Damages, there to remain until the ſaid *T. H.* ſhould be fully ſatisfied of the Debt and Damages aforeſaid: And afterwards, *to wit*, on the Day of then next enſuing, the ſaid [the

Defendant brought in Cuſtody to the Bar of the Court.

Surmiſes that he rendered himſelf in Execution.

And was committed to the Cuſtody of the Marſhal.

Voluntary Eſcape by the Marſhal.

[the Marſhal] permitted him the ſaid *T. S.* being in Priſon in Execution for the ſaid Debt and Damages as aforeſaid, to eſcape out of the ſaid Priſon, and to go at large; whereby the ſaid *T. S.* was diſcharged from the ſaid Execution; and the ſaid *T. S.* being diſcharged from the ſaid Execution in Form aforeſaid, the ſaid *T. H.* afterwards, *to wit*, on the Day of in the Year aforeſaid, at *B.* in the County aforeſaid, cauſed him the ſaid *T. S.* to be taken by Pretence of the ſaid Judgment, and to be committed to the Cuſtody of the Marſhal of the *Marſhalſea* of our ſaid Lord the King, in Execution for the ſaid Debt and Damages; and the ſaid *T. S.* prays that he may be diſcharged from the ſaid Priſon, and of the ſaid Debt and Damages, and ſo forth: But becauſe it is unknown to our Court before Us, whether the Allegation of the ſaid *T. S.* be true or no, it is Commanded to the Sheriff of *Middleſex*, that by good and lawful Men, and ſo forth, he make known to the ſaid *T. H.* that he be before our Lord the King from the Day of *Eaſter* in fifteen Days, whereſoever he ſhall then be in *England*, to ſhew, if any Thing he has for himſelf or knows to ſay, why the ſaid *T. S.* ought not to be diſcharged and delivered from the ſaid Priſon, and of the ſaid Debt and Damages, and ſo forth; and further to do and receive what, and ſo forth. The ſame Day is given to the ſaid *T. S.* and ſo forth. And upon this came *E.* and *B.* Bail in their proper Perſons,

Sci. Fa. *awarded.*

Delivered on Bail.

Perſons, and became Bail for the ſaid *T. S.* to have his Body before our Lord the King at the ſame Time, and ſo forth; and ſo from Day to Day, until, and ſo forth, each of the ſaid Bail under the Penalty of 104 *l.* which ſaid Sums the ſaid Bail acknowledged, and each of them by himſelf acknowledged to be made of their and each of their Lands and Chattels, and to be levied to the Uſe of the ſaid *T. H.* if it ſhould happen that the ſaid *T. S.* ſhould not perſonally appear on the Premiſſes at any Day appointed, or to be appointed for him by the Court of our Lord the King now here, or ſhould not proſecute his ſaid Writ with Effect; or if it happen that Judgment be given for the ſaid *T. H.* againſt the ſaid *T. S.* and ſo forth, he do not render himſelf on that Occaſion to the Priſon of the Marſhal of the *Marſhalſea* of our ſaid Lord the King, before the King himſelf, and ſo forth, or do not pay the ſaid one hundred and four Pounds to the ſaid *T. H.* And be it known that the Writ of our Lord the King in this ſame Term, before our ſaid Lord the King at *Weſtminſter*, is delivered of Record to the Under-ſheriff of the County of *Middleſex* preſent here in Court, to be executed in Form of Law, and ſo forth. At which Day before our Lord the King at *Weſtminſter*, the ſaid *T. S.* came in his proper Perſon; and the Sheriff returned, that he had made known to the ſaid *T. H.* by *J. D.* and *J. F.* good, and ſo forth, which ſaid *T. H.* according to the Notice given him in this Behalf, on the fourth

Return Sci. Feci.

fourth Day of the Plea, being ſolemnly required, alſo came in his proper Perſon, and thereupon prays a Day to imparle; and it is given to him, and ſo forth; And upon this a Day is given to the ſaid Parties to be before our Lord the King, on the Morrow of the Holy *Trinity*, whereſoever, and ſo forth, *to wit*, to the ſaid *T. H.* to imparle, and then to anſwer, and ſo forth; and upon this came, and ſo forth, and became Bail to have the Body of the ſaid *T. S.* before our Lord the King on the ſaid Morrow of the Holy *Trinity*, whereſoever, and ſo forth; and ſo from Day to Day, until, and ſo forth, each of the ſaid Bail Body for Body, and ſo forth.

Entry of the Recognizance on an Audita Querela *in another Manner.*

And upon this, before our Lord the King at *Weſtminſter*, came *N. B. R. R. S. B.* and *R. T.* in their proper Perſons, and became Bail to have the Body of the ſaid *R. M.* before our Lord the King at the ſame Time, and ſo from Day to Day until, and ſo forth; and that the ſaid *R. M.* ſhall proſecute his ſaid Writ of *Audita Querela* with Effect, each of the ſaid Bail under the Penalty of the ſeveral Condemnations aforeſaid; And further, if it happen that Judgment be thereupon given againſt the ſaid *R. M.* then the ſaid Manucaptors grant, and each of them for himſelf grants, That the ſaid ſeveral Debts and Damages be made of their and each of their Lands and Chattels, and be levied to the Uſe of the ſaid *R. H.* if it happen that the ſaid *R. M.* does not ſatisfy him the ſaid ſeveral Debts and Damages.

I have known the Bail on an *Audita Querela* to be taken in Court by the Secondary, in this Manner.

You ſeverally acknowledge yourſelves to owe to *Thomas Dymock* the Plaintiff in the Original Action the Sum of 1000 *l.*

Upon Condition that the Plaintiff in the *Audita Querela* ſhall proſecute his Suit with Effect; and if the ſaid Plaintiff ſhall happen to be convicted or make Default in the Premiſſes, that he ſhall pay the Condemnation Money, or you will do it for him. *Are ye Content?*

Judgment on an Audita Querela *after a Verdict on a Trial at Bar.*

From which Day the ſaid Jury between the ſaid Parties on the Plea aforeſaid, were thereupon reſpited between them before our Lord the King, until on the Morrow of the Holy *Trinity* then next enſuing, whereſoever, and ſo forth; for Defect of Jurors, and ſo forth; on which Morrow of the Holy *Trinity*, before our Lord the King at *Weſtminſter* came as well the ſaid *J. C.* in his proper Perſon, as the ſaid *T. S.* by his Attorney aforeſaid; and the Jurors of the ſaid Jury being required likewiſe came, who to ſay the Truth of and upon the Premiſſes being choſen, tried and ſworn, ſay upon their Oaths, that the ſaid *E. P.* Eſquire, late Sheriff of the County of *C.* permitted the ſaid *J. C.* to eſcape and go at large out of the ſaid Priſon in Manner and Form as the ſaid *J. C.* in his Diſcharge of the ſaid Execution has alledged: Therefore it is conſidered, that the ſaid *T.* be entirely barred

from all Execution whatſoever by Pretence of the ſaid Recovery; and that the ſaid *J. C.* be diſcharged from the ſaid Execution, and ſo forth.

Another Form. It is therefore conſidered, that the ſaid Plaintiff be diſcharged from the Execution of the ſaid Debt and Damages, and be delivered out of the Priſon, in which he is detained on that Account, and ſo forth. *Mich.* 4 & 5 *Jac.* 1. *Rot.* 117. *Dyer* 194.

Another Form. It is therefore conſidered, that the ſaid *G.* have no further Execution againſt the ſaid *V.* or againſt any of the Lands, Tenements, Goods or Chattels of the ſaid *V.* by Pretence of the ſaid Recognizance; and that the ſaid *G.* be entirely barred from having any Execution thereupon by Pretence of the ſaid Recognizance; and the ſaid *V.* and all his Lands, Tenements, Goods and Chattels be entirely diſcharged from ſuch Execution, and ſo forth.

No Coſts or Damages. No Damages or Coſts can be given to a Plaintiff on an *Audita Querela*. See *Dyer* 194.

As to Reſtitution upon a Recovery in an Audita Querela. Whether the Plaintiff in an *Audita Querela*, if it be found for him ſhall have Reſtitution, or no, there being no ſuch thing mentioned in the Judgment. See 1 *Sid.* 74. *pl.* 4. 1 *Keb.* 245. *pl.* 4. 260. *pl.* 39.

If Plaintiff Nonſuited, can have no new Superſedeas. If the Plaintiff in an *Audita Querela* be Nonſuited, though he may have a new Writ of *Audita Querela*, he ſhall have no *Superſedeas* to ſtay Execution.

Wager

Wager of Law.

WHERE an Action of Debt is brought againſt one upon ſome Simple Contract between the Parties without Deed or Record, there the Defendant may wage his Law by Swearing in Court in the Preſence of his Compurgators, that he owes not the Money in Manner and Form as the Plaintiff hath declared, nor any Penny thereof. *Where Defendant may Wage his Law.*

On Debt for the Penalty of a By-Law made by a Corporation, the Defendant ſhall not wage his Law, becauſe it is founded on the Wrong of the Party, in not ſubmitting to the Order of the Government of the Corporation, and ariſes from the Defendant's Contempt and Diſobedience; and in ſuch Caſes no Wager ought to be allowed; ſo in Debt for an Eſcape, for it ſuppoſes a Wrong; ſo in Debt for Subſtraction of Tithes; ſo it is in Debt on a *Devaſtavit*. *Wager of Law lies not in Debt on a By-Law, nor any Action where a Wrong is ſuppoſed.*

No Wager lies but where the Debt ariſes from a Simple Contract that is ſecret, and not where the Action is founded on any thing that is Notorious. In Account, if the Receipt was by the Hands of the Defendant, he may wage his Law, not if by the Hands of a third Perſon; but in Bailment, though by the Hands of a third Perſon, the Defendant may wage his Law, becauſe the Bailment is not traverſable, but *Wager lies in Account if received of the Plaintiff, not of a Stranger.*

the Detainer and the Re-delivery may be private.

In Debt for Arbitrament. In Debt on an Arbitrament where the Submiſſion is by Parol, the Defendant may wage his Law for the Submiſſion may be ſecret.

In Debt for an Amerciament in a Court-Baron. In Debt for an Amerciament in a Court Baron, the Defendant may Wage his Law, becauſe the Matter is of ſmall Value, which concerns the Lord only, and tranſacted in *Pais*, which might be without his Knowledge; but in Debt on a Judgment in a Court-Baron, the Defendant cannot wage his Law for the Confeſſion could not be but by Confeſſion or Verdict.

But not on a Judgment in a Court-Baron.

Lies not in Debt for Rent. In Debt for Rent on a Leaſe Parol the Defendant cannot wage his Law, becauſe his Occupation is notorious; and ſo it is in Account againſt a Bailiff for the ſame Reaſon.

Nor in Debt by a Gaoler for Meat and Drink. In Debt by a Gaoler againſt his Priſoner for Meat and Drink, the Defendant cannot wage his Law, becauſe the Defendant is in Durance, and the Plaintiff cannot take Security from him for Repayment, for a Bond will be void, and he muſt be content with a Promiſe. *Salk.* 683, 684.

Declaration againſt a Bailiff by the Hands of the Plaintiff. *Suſſex*, to wit, *Thomas Delves* complains of *William Gunner*, being in the Cuſtody of the Marſhal, *&c.* of a Plea, that he render him reaſonable Account from the Time he was Bailiff of the ſaid *Thomas*; for that, *to wit*, that whereas the ſaid *William Gunner* was Bailiff of the ſaid *Thomas* at *Eaſtboadly* in

the Detainer and the Re-delivery may be proved.

In Debt for Arbitrament. In Debt on an Arbitrament where the Submission is by Deed, the Defendant may wage his Law, for the Submission may be by Parol.

In Debt for an Amerciament in a Court Baron. In Debt for an Amerciament in a Court Baron, the Defendant may Wage his Law, because the Matter is of small Value, which concerns the Land only, and differs in this, which might be rather for Knowledge; but in Debt on a Judgment in a Court-Baron, the Defendant cannot wage his Law for the Confession could not be but by Confession or Verdict.

But not on a Judgment in other Courts.

Debt for Rent. In Debt for Rent on a Lease Parol the Defendant cannot wage his Law, because his Occupation is notorious, and so it is in an Account against a Bailiff for the same Reason.

Not in Debt by a Guardian for Meat and Drink. In Debt by a Guardian against his Prisoner for Meat and Drink, the Defendant cannot wage his Law, because the Defendant is to Account, and the Plaintiff cannot take Security from him for Repayment, for a Bond will be void, and he must be present with a Prisoner. Stat. 23 H. 8. c. 15.

Prohibition against the Bishop to the Book of the Plaintiff. Upon a Libel in the Spiritual Court by Thomas Dixon complaint of William Gunner, being in the Custody of the Marshal, Viz. of a Plea, that he render him reasonable Accounts from the Time he was Bailiff of the said Thomas, for that, &c. That whereas the said William Gunner was Bailiff of the said Thomas of Kirkby

in the County aforeſaid, from the third Day of *March* in the Year of our Lord until the thirtieth Day of the ſame Month of *March*, and during that Time had received of the Goods, Wares and Merchandizes of the ſaid *Thomas*, by the Hands of the ſaid *Thomas*, the proper Goods, Wares and Merchandizes following, *to wit*, five Bags of Hops containing twelve hundred Weight, two Quarters, and twenty-two Pounds of Hops to the Value of forty-nine Pounds and ten Shillings of lawful Money of *Great Britain*, to merchandize and diſpoſe of for the ſaid *Thomas*; and to render the ſaid *Thomas* reaſonable Account thereof, when he ſhould be thereunto required: Nevertheleſs the ſaid *William*, although often required, *&c.* has not rendered the ſaid *Thomas* reaſonable Account thereof, but to render him the ſame hath altogether refuſed and ſtill doth refuſe; wherefore the ſaid *Thomas* ſaith, he is the worſe, and hath Damage to the Value of one hundred Pounds; and thereupon he brings Suit, *&c.*

Plea in Bar that he never was Bailiff.

And the ſaid *William*, by his Attorney, comes and defends the Force and Injury, when, *&c.* and ſays, That he never was Bailiff of the ſaid *Thomas*, of the Goods, Wares and Merchandizes aforeſaid of the ſaid *Thomas*, nor of any Parcel thereof, in Form as the ſaid *Thomas* has above declared againſt him; and this he is ready to defend againſt him and his Suit, as the Court of our Lord the

King here ſhall conſider: Therefore it is conſidered, That the ſaid *William* thereupon wage his Law with ſix Compurgators, Pledges of the Law *John Den* and *Richard Fen*, and come with his Law here on *Thurſday* next after three Weeks from the Day of St. *Michael*; And it is told to the Attorney of the ſaid *William*, That he have then here at the ſame Day the ſaid *William* his Maſter in his proper Perſon, to perfect his ſaid Law.

Judgment that the Defendant wage his Law with ſix Compurgators.

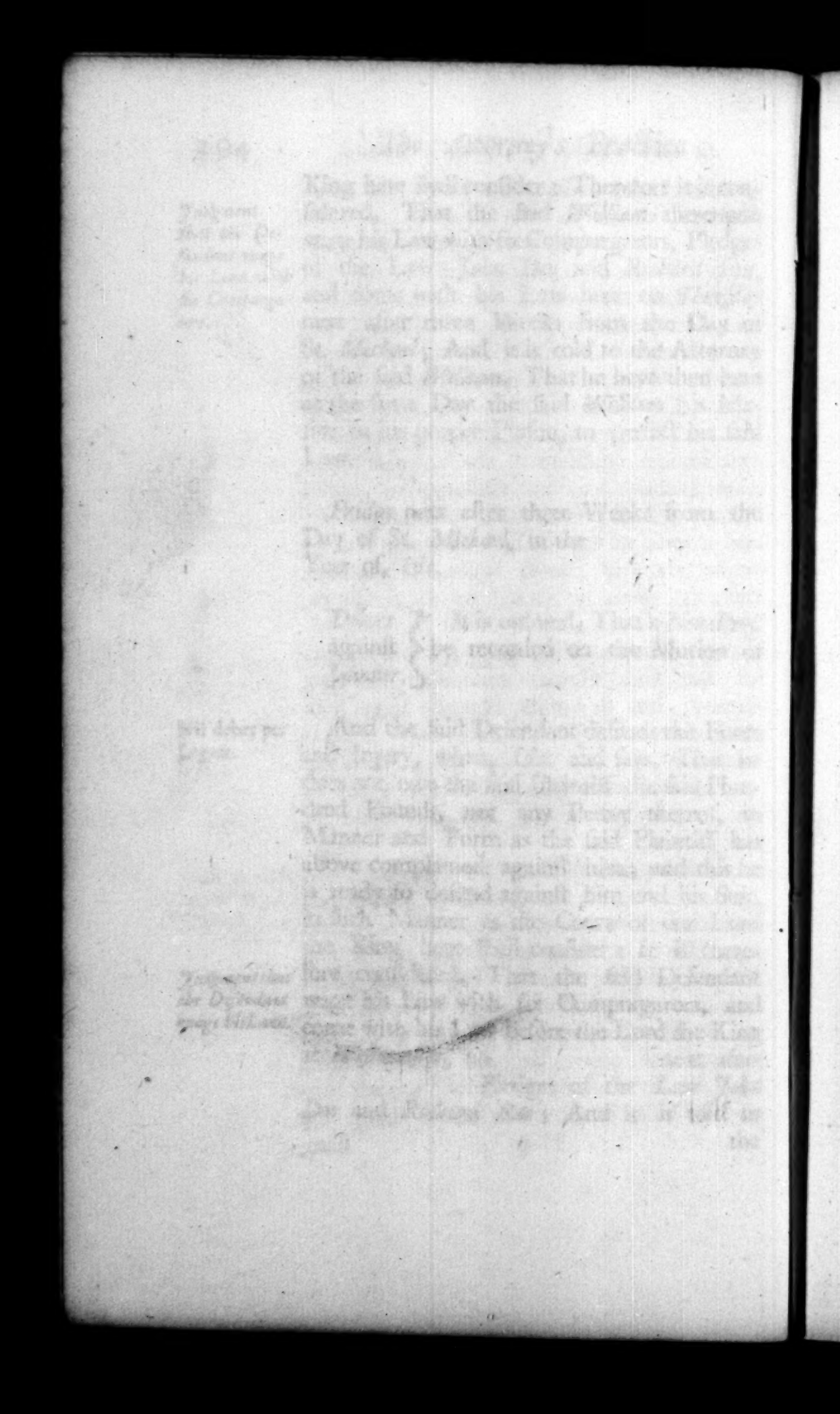
Friday next after three Weeks from the Day of St. *Michael*, in the Year of, *&c.*

Delves againſt *Gunner.* } It is ordered, That a *Non Proſ.* be recorded on the Motion of

And the ſaid Defendant defends the Force and Injury, when, *&c.* and ſays, That he does not owe the ſaid Plaintiff the ſaid Hundred Pounds, nor any Penny thereof, in Manner and Form as the ſaid Plaintiff has above complained againſt him; and this he is ready to defend againſt him and his Suit, in ſuch Manner as the Court of our Lord the King here ſhall conſider: It is therefore conſidered, That the ſaid Defendant wage his Law with ſix Compurgators, and come with his Law before the Lord the King at *Weſtminſter*, on next after Pledges of the Law *John Doe* and *Richard Roe*; And it is told to the

Nil debet per Legem.

Judgment that the Defendant wage his Law.



the Attorney of the ſaid Defendant, That he have before our Lord the King at that Day the ſaid Defendant his Maſter in his proper Perſon, to perfect thereupon his Law, *&c.* The ſame Day is given to the Plaintiff at the ſame Place: At which Day before our Lord the King at *Weſtminſter* came as well the ſaid Plaintiff by his Attorney aforeſaid, as the ſaid Defendant in his proper Perſon; and upon this the ſaid Defendant perfected his Law thereupon with ſix Compurgators, as he has above waged it. It is therefore conſidered, That the ſaid Plaintiff take nothing by his ſaid Bill; but for his falſe Complaint be in Mercy, and that the Defendant go thereupon without Day, *&c.*

Defendant perfects his Law.

Judgment thereupon.

If the Plaintiff be Nonſuited, then after the Word (*Weſtminſter*) ſay, The ſaid Defendant came in his proper Perſon; and the ſaid Plaintiff, although at the ſame Day ſolemnly required came not, nor did he further proſecute his ſaid Bill againſt the ſaid Defendant; therefore *&c.* Judgments and Coſts, as is uſual in *Non-Proſſes.*

When Plaintiff Non-proſſed.

If the Defendant wages his Law *inſtanter*, then after the Judgment for the Defendant to wage his Law, ſay thus: And upon this the ſaid Defendant prays that he may be admitted to wage his Law thereupon inſtantly; and he is admitted, *&c.* and upon this the ſaid Defendant here in Court perfected his Law thereupon, *&c.* It is therefore, *&c.*

Defendant perfects his Law inſtanter.

When the Defendant wages his Law, the Secondary muſt appoint a Day for him to appear in Court to wage his Law; and if he appears, he muſt bring with him ſix Compurgators, who are to ſwear that they believe he ſwears true. The Secondary muſt have the Record in Court, and the Defendant muſt be ſet at the right Corner of the Bar, without the Bar; then the Secondary will ask him if he will wage his Law; if he anſwers, he will, then the Judges uſually admoniſh him and his Compurgators, that they do not take a falſe Oath; but if they perſiſt, the Secondary ſpeaks as follows:

Secondary. *A. B.* (the Defendant) you owe *C. D.* (the Plaintiff) 100 *l.* (or as the Caſe is) Why do you not pay him?

Defendant. I owe him nothing.

Secondary. Did you not buy, *&c.* (as in the Declaration?)

Defendant. No.

Secondary. Will you take your Oath of it?

Defendant. I will.

If the Plaintiff does not appear on being called thrice by the Cryer, he becomes Nonſuited, and the Defendant goes Quit without taking his Oath; but if he appears, the Secondary bids the Cryer call the Plaintiff, and the Defendant lay his Right Hand upon the Book, and ſay after him thus: Hear, ye Juſtices, that I owe not *C. D.* (the Plaintiff) 100 *l.* nor any Penny thereof, in Manner and Form as he hath declared

The Oath.

declared againſt me; ſo help me God, and the Contents of this Book.

And then his Compurgators ſtanding behind him are called over, and each holds up his Right Hand, and then lay their Hands upon the Book, and ſwear that they believe that what the Defendant ſwore was true.

If the Defendant wage his Law *inſtanter*, the Plaintiff cannot be Nonſuited, but is for ever barred; but if a Day is given, whether in the ſame Term or another, the Plaintiff is demandable, and may be Nonſuited, and bring a new Action.

Precedents of Declarations, Pleadings, Writs, &c.

Eaſter *Term in the Seventh Year of the Reign of his preſent Majeſty* George *the Second, King of* Great Britain, *and ſo forth.*

Middleſex, to wit. BE it remembered, that heretofore, that is to ſay, of the Term of St. *Hilary* laſt paſt, before the Lord the King at *Weſtminſter* came *A. B.* by *A. S.* his Attorney, and brought here into the Court of the ſaid Lord the King then there his certain Bill againſt *C. D.* in Cuſtody of the Marſhal, and ſo forth; upon

Memorandum of a precedent Term.

upon a Plea of Debt, and ſo forth; and there are Pledges of proſecuting, *to wit*, *John Doe* and *Richard Roe*, which ſaid Bill follows in theſe Words: *Middleſex*, *to wit*, *A. B.* complains of *C. D.* being in Cuſtody of the Marſhal of the *Marſhalſea* of our Sovereign Lord the King before the King himſelf, of a Plea that he render to the ſaid *A.* 30,000 *l.* lawful Money of *Great Britain*, which the ſaid *C.* owes to the ſaid *A.* and unjuſtly detains from him; For this, *to wit*, That whereas the ſaid *A.* heretofore, that is to ſay, in the Term of St. *Hilary* in the Twelfth Year of the Reign of his late Majeſty King *George* the Firſt, in his ſaid late Majeſty's Court, before Sir *Robert Eyre* Knight and his Companions, then his ſaid late Majeſty's Juſtices of the Bench at *Weſtminſter* in the ſaid County of *Middleſex*, by Conſideration of the ſame Court, recovered againſt the ſaid *C.* by the Name of *C.* late of, *&c.* 30,000 *l.* which in the ſame Court were adjudged to the ſaid *A.* for his Damages which he had ſuſtained, as well by Occaſion of the ſaid *C.* breaking certain Covenants made between the ſaid *A.* and the ſaid *C.* as for the ſaid *A.*'s Coſts and Charges by him laid out about his Suit in that Behalf, whereof the ſaid *C.* is convicted, as by the ſaid Record and Proceedings thereof now remaining in the Court of our preſent Lord the King before his Juſtices of the Bench at *Weſtminſter* aforeſaid manifeſtly appears; which ſaid Judgment ſtill remains in full Force and Effect,

Declaration in Debt on a Judgment in the Common Pleas.

no

If on a Judgm.t in K.B. then thus

And that whereas the ſ.d A. in a Term of St Hilary in the ſ.d year of the reign of his preſent majeſty in his ſaid Majeſty's Court before himſelf at Weſtminſter in the County of Middx by Cons.n of the ſame Court recovered ag.t the ſ.d C. D. . . . which was awarded to the ſaid A. for his damages which he had ſuſtained as well by reaſon of a certain Treſpaſs upon the caſe lately done to the ſaid A. by the ſ.d C. D. as for his Expences and Coſts about his Suit in that behalf by him laid out whereof he is convicted &c as by the Record & proceedings thereof in the ſame Court before his preſent majeſty may appear which ſaid Judgm.t [and ſo on to this]

no ways reverſed or annulled; and the ſaid *A.* hath not yet obtained his Execution againſt the ſaid *C.* of his Damages aforeſaid upon the ſaid Judgment; whereby an Action has accrued to the ſaid *A.* to demand and have of the ſaid *C.* the ſaid 30,000 *l.* Nevertheleſs the ſaid *C.* though often requeſted, has not yet paid the ſaid 30,000 *l.* to the ſaid *A.* but hath hitherto refuſed to pay the ſame to him, and ſtill doth refuſe, to the Damage of the ſaid *A.* 10,000 *l.* and therefore he brings this Suit, and ſo forth.

Imparlance.

And now at this Day, *to wit*, *Wedneſday* next after 15 Days from *Eaſter* Day in this ſame Term, until which Day the aforeſaid *C.* had Leave of imparling to the aforeſaid Bill, and then to anſwer, and ſo forth, before the King at *Weſtminſter*, comes as well the aforeſaid *A.* by *A. S.* his Attorney, as the aforeſaid *C.* by *H. R.* his Attorney; and the aforeſaid *C.* defends the Force and Injury when, and ſo forth, and ſaith, That the ſaid *A.* ought not to have or maintain his ſaid Action againſt him; becauſe he ſaith, That he the ſaid *C.* before the Day of exhibiting of the ſaid Bill of the ſaid *A.* againſt him, *to wit*, on the firſt Day of *July* in the firſt Year of the Reign of his preſent Majeſty at *Weſtminſter* aforeſaid, paid to the ſaid *A.* the ſaid Sum of 30,000 *l.* And this he is ready to verify; wherefore he prays Judgment if the ſaid *A.* ought to have or maintain his ſaid Action againſt him, *&c.*

Payment pleaded.

And

Replication. And the ſaid *A.* ſaith, that he, by any Thing by the ſaid *C.* above in Pleading alledged, ought not to be barred from having or maintaining his ſaid Action thereof againſt him, becauſe he the ſaid *A.* ſaith, That the ſaid *C.* did not pay to him the ſaid *A.* the ſaid Sum of 30,000 *l.* as the ſaid *C.* in his ſaid Plea above hath alledged; and this he prays may be enquired of by the Country; and the ſaid *C.* doth the like, *&c.* Therefore let a Jury come thereupon before the Lord the King at *Weſtminſter*, on next after and who neither, and ſo forth, to take Knowledge, and ſo forth; becauſe as well, and ſo forth. The ſame Day is given to the ſame Parties there, and ſo forth.

Iſſue.

Venire awarded.

Hilary *Term in the Twelfth Year of King* George *the Second.*

Memorandum of a particular Day in the preceding Term. *Middleſex.* Be it remembered, that heretofore, *to wit*, *Tueſday* next after fifteen Days from the Day of St. *Martin* in *Michaelmas* Term laſt paſt, before our Lord the King at *Weſtminſter Sarah Jolley* came by *James Turner* her Attorney, and brought into the Court of our Lord the King then there her Bill againſt *Margaret Roſe*, being in the Cuſtody of the Marſhal of the *Marſhalſea* of our ſaid Lord the King, before the King himſelf, of a Plea of Debt, and there are Pledges for Proſecuting, *to wit*, *John*

John Doe and *Richard Roe*, which ſaid Bill follows in theſe Words: *to wit*, *Middleſex*, *to wit*, *Sarah Jolley* complains of *Margaret Roſe*, being in the Cuſtody of the Marſhal of the *Marſhalſea* of our Lord the King before the King himſelf, of a Plea, that ſhe render to the ſaid *Sarah* thirty-five Pounds of lawful Money of *Great Britain*, which the ſaid *Margaret* owes to the ſaid *Sarah*, and unjuſtly detains from her; for that, *to wit*, That whereas the ſaid *Sarah*, in this preſent *Michaelmas* Term, in the Court of our ſaid Lord the King before the King himſelf now here, *to wit*, at *Weſtminſter*, by the Conſideration of the ſaid Court recovered againſt the ſaid *Margaret*, by the Name of *Margaret Roſe*, Executrix of the laſt Will and Teſtament of *Iſaac Stephens* deceaſed, otherwiſe lately called *Iſaac Stephens* of the Pariſh of *Chelſea* in the County of *Middleſex*, Carpenter, as well a certain Debt of thirty-five Pounds, as ſeventeen Pounds, which in the ſame Court here were adjudged to the ſaid *Sarah* for her Damages which ſhe had ſuſtained, as well by Occaſion of the detaining that Debt, as for her Coſts and Charges by her about her Suit in that Behalf expended, to be levied of the Goods and Chattels which were of the ſaid *Iſaac* at the Time of his Death, if the ſaid *Margaret* had ſo much in her Hands to be adminiſtred, whereof the ſaid *Margaret* was convicted, as by the Record and Proceedings thereof in the ſaid Court here remaining manifeſtly

Debt on a Judgment (recovered againſt the Defendant as an Executrix) ſuggeſting a Devaſtavit.

feſtly appears; and the ſaid *Sarah* in Fact ſays, That the ſaid *Margaret* afterwards ſatisfied her the ſaid *Sarah* of the ſaid ſeventeen Pounds for the Damages aforeſaid; which ſaid Judgment ſtill remains in full Force and Effect as to the ſaid Debt; no Ways reverſed, annulled or ſatisfied; and the ſaid *Sarah* hath not yet obtained her Execution againſt the ſaid *Margaret* of the Debt aforeſaid upon the ſaid Judgment. And the ſaid *Sarah* further in Fact ſays, that after the ſaid Judgment was given in Form aforeſaid, *to wit*, on the Day of *November* in the Twelfth Year of the Reign of our Sovereign Lord the now King at *Weſtminſter* aforeſaid in the County aforeſaid, divers Goods and Chattels, which were of the ſaid *William* at the Time of his Death, to the Value of the ſaid Debt of 35 *l.* came to the Hands of the ſaid *Margaret* to be adminiſtred; which ſaid Goods and Chattels the ſaid *Margaret* afterwards, *to wit*, on the ſame Day and Year at *Weſtminſter* aforeſaid, ſold, eloined, waſted, converted and diſpoſed to her own proper Uſe; by which an Action accrued to the ſaid *Sarah* to demand and have of the ſaid *Margaret* the ſaid thirty-five Pounds: Nevertheleſs, the ſaid *Margaret*, although often required, *&c.* has not yet paid the ſaid thirty-five Pounds to the ſaid *Sarah*, but has entirely refuſed, and ſtill does refuſe, to pay her the ſame; whereupon ſhe ſays ſhe is damnified, and has Damage

Devaſtavit *ſuggeſted.*

Damage to the Value of ten Pounds, and thereupon ſhe brings Suit, *&c.*

And now at this Day, *to wit*, *Tueſday* next after the Octave of St. *Hilary* in this ſame Term, to which Day the ſaid *Margaret* had Leave to imparle to the ſaid Bill, and then to anſwer, *&c.* before our Lord the King at *Weſtminſter*, comes as well the ſaid *Sarah Jolley*, by her Attorney aforeſaid, as the ſaid *Margaret* by *Giles Taylor* her Attorney; And the ſaid *Margaret* defends the Force and Injury, when, *&c.* and ſays, That the ſaid *Sarah* ought not to have or maintain her ſaid Action againſt her the ſaid *Margaret*, becauſe ſhe ſays, that there is no ſuch Record of the Recovery aforeſaid in the ſaid Court of our ſaid Lord the King now here remaining, as the ſaid *Sarah* by her Declaration has above ſuppoſed. And this ſhe is ready to verify; whereupon ſhe prays Judgment if the ſaid *Sarah* ought to have or maintain her ſaid Action againſt her the ſaid *Margaret*, *&c.*

Imparlance.

Plea Nul tiel *Record.*

And the ſaid *Sarah* ſays, That ſhe, by any thing before alledged by the ſaid *Margaret* in pleading, ought not to be barred from having her aforeſaid Action againſt the ſaid *Margaret*; becauſe ſhe ſays, That there is ſuch Record of the Recovery aforeſaid remaining in the ſaid Court of our ſaid Lord the King now here before the King himſelf, *to wit*, at *Weſtminſter* aforeſaid, as ſhe the ſaid *Sarah* has by her ſaid Declaration above ſuppoſed. And this

Replication, Habetur tale Recordum.

Iſſue. this ſhe is ready to verify by that Record, as appears in *Trinity* Term in the Eleventh and Twelfth Years of the Reign of our ſaid Lord the now King, in the Roll; and ſhe prays that the ſaid Term and Roll may by the ſaid Court of our ſaid Lord the King now here be viewed and inſpected; and becauſe it is neceſſary that the ſaid Record be viewed and inſpected before that Judgment in this Behalf be given, a Day for that Purpoſe is given by the Court here before our Lord the King at *Weſtminſter*, until *Wedneſday* next after fifteen Days from the Day of *Eaſter*; and the ſame Day is alſo given to the Parties aforeſaid at the ſame Place.

Of Eaſter *Term in the Ninth Year of the Reign of King* George *the Second.*

Memorandum of a precedent Term. London, *to wit*, Be it remembered, that heretofore (that is to ſay) of the Term of St. *Hilary* laſt paſt, came before our Sovereign Lord the King at *Weſtminſter*, *W. L.* and *E. P.* his Wife, Adminiſtratrix of all and ſingular the Goods and Chattels, Rights and Credits which were of *J. K.* her late Husband deceaſed, by *G. W.* their Attorney, and brought here into the Court of our ſaid Lord the King then there their Bill againſt *N. G.* otherwiſe called *N. G.* of, *&c.* Merchant, being in the Cuſtody of the Marſhal of the *Marſhalſea* of our ſaid Lord the King, before the King himſelf, in a Plea of

Debt; and there are Pledges to profecute (*to wit*) *John Doe* and *Richard Roe*; which ſaid Bill follows in theſe Words: *London*, *to wit*, *W. L.* and *E.* his Wife, Adminiſtratrix of all and ſingular the Goods and Chattels, ~~Rents~~ and Credits, which were of *J. K.* her late Huſband deceaſed, complain of *N. G.* otherwiſe called *N. G.* of *&c.* Merchant, in the Cuſtody of the Marſhal of the *Marſhalſea* of our Lord the King, being before the King himſelf, of a Plea that he render to them 3000 *l.* of lawful Money of *Great Britain*, which he unjuſtly detaineth from them; for that whereas the ſaid *N.* on the 20th Day of *January* in the Seventh Year of the Reign of our late Sovereign Lord *George*, late King of *Great Britain*, *&c.* at *London*, (*to wit*) in the Pariſh of St. *Mary le Bow* in the Ward of *Cheap*, by a certain Writing Obligatory, ſealed with the Seal of him the ſaid *N.* and now ſhewn to the Court of our ſaid Lord the King here, bearing Date the Day and Year laſt above mentioned, did acknowledge himſelf to be held and firmly bound to the ſaid *J.* in the ſaid Sum of 3000 *l.* to be paid to the ſaid *J.* or his certain Attorney, Executors, Adminiſtrators or Aſſigns, whenever he ſhould be requeſted ſo to do: Nevertheleſs, the ſaid *N.* although he by the ſaid *J.* in his Lifetime, and by the ſaid *W.* and *E.* (after the Celebration of the Marriage between them, and after the Death of the ſaid *J.*) was thereunto requeſted, hath not paid the ſaid

Debt by Baron and Feme Adminiſtratrix on Bond to Inteſtate.

Sum of 3000 *l.* or any Part thereof, either to the ſaid *J.* in his Life-time, or to the ſaid *W.* and *E.* or either of them, after the Death of the ſaid *J. E.* (to which ſaid *E.* Adminiſtration of all and ſingular the Goods and Chattels, Rights and Credits which were of the ſaid *J. K.* deceaſed at the Time of his Death, who died inteſtate, by *William* by divine Providence Archbiſhop of *Canterbury*, Primate and Metropolitan of all *England*, after the Deceaſe of the ſaid *J.* at *London* aforeſaid in the Pariſh and Ward aforeſaid, on the Seventh Day of *November* in the Year of our Lord 1730, was duly committed) but hath hitherto refuſed to pay to them or either of them, the ſaid 2631 *l.* and ſtill refuſeth to pay the ſame to the ſaid *W.* and *E.* or either of them, in Delay of the Execution of the Adminiſtration of the Goods and Chattels, Rights and Credits of the ſaid *J.* whereupon they the ſaid *W.* and *E.* ſay they are injured, and have Damage to the Amount of 20 *l.* and therefore they bring their Suit, *&c.*

Profert of Letters of Adminiſtration.

And the ſaid *W.* and *E.* bring here into Court the Letters of Adminiſtration aforeſaid of the ſaid Archbiſhop, which are dated the Day and Year aboveſaid, by which it may ſufficiently appear, that the ſaid *E.* hath the Adminiſtration of all and ſingular the Goods and Chattels, Rights and Credits, which belonged to the ſaid *J.* at the Time of his Death, committed to her in Form aforeſaid.

And

And now at this Day, that is to ſay, *Wedneſday* next after fifteen Days from the Feaſt of *Eaſter* in this ſame Term, until which Day the ſaid *N.* had Leave to imparle to the ſaid Bill, and then to anſwer the ſame as he ſhould be adviſed, before our Sovereign Lord the King at *Weſtminſter*, came as well the ſaid *W.* and *E.* by their ſaid Attorney, as the ſaid *N.* by *A. S.* his Attorney; and the ſaid *N.* defends the Force and Injury when, and ſo forth, and craves Oyer of the ſaid Writing Obligatory; and it is read to him in theſe Words; that is to ſay, Know all Men by theſe Preſents, that I *N. G.* of *&c.* Merchant, am held and firmly bound unto *J. K.* of *London* Merchant, in the Sum of 3000 *l.* of good and lawful Money of *Great Britain*, to be paid to the ſaid *J. K.* his certain Attorney, Executors, Adminiſtrators or Aſſigns; to which Payment well and truly to be made and done, I bind myſelf, my Heirs, Executors and Adminiſtrators, firmly by theſe Preſents, ſealed with my Seal, dated the 20th Day of *January* in the Seventh Year of the Reign of our Sovereign Lord *George*, by the Grace of God King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, *&c. Anno Dom.* 1720. And he likewiſe craves Oyer of the Condition of the ſaid Writing Obligatory, which is read to him in theſe Words; that is to ſay, The Condition of this Obligation is ſuch, that if the above bounden *N. G.* his Heirs, Executors or Adminiſtrators, ſhall and do well and truly

Imparlance.

Oyer of Obligation.

Oyer of Condition.

truly pay, or cauſe to be paid unto the above-named *J. K.* his Executors, Adminiſtrators or Aſſigns, the full Sum of 1500 *l.* of good and lawful Money of *Great Britain*, at or before the firſt Day of *September* next enſuing the Date hereof, without Fraud or further Delay, then this Obligation to be void and of none Effect, or elſe to be and remain in full Force and Virtue; which being read and heard, the ſaid *N.* ſaith, That the ſaid *W.* and *E.* ought not to have or maintain their ſaid Action thereof againſt him the ſaid *N.* becauſe he ſaith, that after the making of the ſaid Writing Obligatory, and after the ſaid firſt Day of *September* mentioned in the ſaid Condition, and before the Day of exhibiting of the Bill of them the ſaid *W.* and *E.* that is to ſay, on the 18th Day of *January* in the Year of our Lord 1735, at *London* aforeſaid; that is to ſay, in the ſaid Pariſh of St. *Mary le Bow* in the ſaid Ward of *Cheap*, he the ſaid *N.* paid to them the ſaid *W.* and *E.* as Adminiſtrators as aforeſaid, the ſaid Sum of 1500 *l.* contained in the ſaid Condition, according to the Form and Effect of the Statute in ſuch Caſe made and provided, together with all Intereſts then due thereon: And this he is ready to verify; wherefore he prays Judgment whether the ſaid *W.* and *E.* ought to have or ſupport their ſaid Action thereof, againſt him the ſaid *N.* and ſo forth.

Plea of Payment purſuant to the Statute.

Replication. And the ſaid *W.* and *E.* ſay, That they, for any Thing above alledged by the ſaid *N.*

in

in his ſaid Plea, ought not to be precluded from having their ſaid Action againſt him the ſaid *N.* becauſe they ſay, that the ſaid *N.* hath not paid to them the ſaid *W.* and *E.* the ſaid Sum of 1500 *l.* with all Intereſt thereon due, in ſuch Manner and Form as the ſaid *N.* hath above alledged in his ſaid Plea; and this they pray may be enquired of by the Country; and the ſaid *N.* doth ſo likewiſe. Therefore let the Jurors come before our Lord the King at *Weſtminſter*, on next after who are in no wiſe related to the ſaid *W.* and *E.* or the ſaid *N.* to make a certain Jury of the Country between the ſaid Parties of the Plea aforeſaid, to recognize upon their Oaths the full Truth of and concerning the Premiſſes; becauſe as well the ſaid *N.* as the ſaid *W.* and *E.* between whom the Matter in Variance is, have put themſelves upon that Jury. The ſame Day is given to the ſaid Parties there, *&c.*

Iſſue.

Venire *awarded.*

Hilary *Term in the Ninth Year of the Reign of King* George *the Second.*

Roll.

Ventris.

Cornwall, *to wit*, Be it remembered, that on *Friday* next after the *Octave* of Saint *Hilary* in this ſame Term, before our Lord the King at *Weſtminſter*, *A. B.* comes by

Memorandum of the ſame Term.

S. H. his Attorney, and now brings here in the ſaid Court of our ſaid Lord the King his certain Bill againſt *C. D.* Eſq; being in the Cuſtody of the Marſhal of the King's *Marſhalſea* before the King himſelf, of a Plea of Debt; and there are Pledges of Proſecuting, *to wit*, *John Doe* and *Richard Roe*; which ſaid Bill follows in theſe Words:

Declaration in Debt on the Statute againſt Bribery at Elections.

Cornwall, to wit, *A. B.* complains of *C. D.* Eſq; in the Cuſtody of the Marſhal of the King's *Marſhalſea* before the King himſelf, in a Plea, that he render to him two thouſand Pounds of lawful Money of *Great Britain*, which he oweth to him, and unjuſtly detaineth from him; for this that the ſaid *C.* not regarding the Statute in ſuch Caſe lately made and provided, nor fearing the Penalty therein contained, after the twenty-fourth Day of *June*, 1729. *to wit*, upon the Day of in the Year of our Lord 1734. at in the County of *Cornwall* aforeſaid, did corrupt one *G. G.* to give his Vote for him the ſaid *C.* to be choſen one of the Members for the Borough of in the ſaid County of *Cornwall*, to ſerve for the Commons in the next Parliament for the ſaid Borough) he the ſaid *G. G.* then having a Right to vote in the ſaid Election, and which Election afterwards, *to wit*, on the Day of in the ſaid Year of our Lord 1734, was had at the ſaid Borough (by his the ſaid *C.*'s promiſing to advance and pay unto the ſaid *G. G.* the Sum of five Pounds of lawful Money of *Great*

Great Britain, *to wit*, at aforeſaid in the County aforeſaid, as and for a Reward to the ſaid *G. G.* in that Behalf, contrary to the Form of the ſaid Statute in ſuch Caſe lately made and provided, whereby, and by Force of the ſaid Statute in ſuch Caſes lately made and provided, an Action accrued to the ſaid *A. B.* to demand and have of the ſaid *C.* five hundred Pounds, Parcel of the ſaid two thouſand Pounds. And the ſaid *A. B.* further ſaith, that the ſaid *C.* not regarding the ſaid Statute in ſuch Caſes lately made and provided, nor fearing the Penalty therein contained, after the twenty-fourth Day of *June* in the ſaid Year of our Lord 1729. *to wit*, upon the Day of in the ſaid Year of our Lord 1734, at aforeſaid in the ſaid County of *Cornwall*, did corrupt the ſaid *G. G.* to give his Vote for him the ſaid *C.* to be choſen one of the Members for the ſaid Borough of in the ſaid County of *Cornwall*, to ſerve for the Commons in the then next Parliament of *Great Britain*, in an Election then ſhortly to be had of Members to ſerve for the Commons in the ſaid Parliament for the ſaid Borough, (he the ſaid *G. G.* then having a Right to vote in the ſaid Election, and which Election afterwards, *to wit*, upon the ſaid Day of in the ſaid Year of our Lord 1734, was had at the ſaid Borough) by his the ſaid *C.*'s advancing and paying unto the ſaid *G. G.* the Sum of five Pounds of lawful Money of *Great Britain*, *to wit*,

at aforeſaid in the County aforeſaid, as and for a Reward to the ſaid *G. G.* in that Behalf, contrary to the Form of the ſaid Statute in ſuch Caſes lately made and provided, whereby, and by Force of the ſaid Statute in ſuch Caſe lately made and provided, an Action accrewed to the ſaid *A. B.* to demand and have of the ſaid *C.* another Sum of five hundred Pounds, other Parcel of the ſaid two thouſand Pounds. And the ſaid *A. B.* further ſaith, that the ſaid *C.* not regarding the ſaid Statute in ſuch Caſe lately made and provided, nor fearing the Penalty therein contained, after the ſaid twenty-fourth Day of *June* in the ſaid Year of our Lord 1729, *to wit*, upon the Day of in the ſaid Year of our Lord 1734, at aforeſaid in the County of *Cornwall*, did corrupt the ſaid *G. G.* to give his Vote for him the ſaid *C.* to be choſenone of the Members for the ſaid Borough of in the ſaid County of *Cornwall*, to ſerve for the Commons in the then next Parliament of *Great Britain*, in an Election then ſhortly to be had of Members to ſerve for the Commons in the ſaid Parliament for the ſaid Borough, (he the ſaid *G. G.* then claiming to have a Right to vote in the ſaid Election, and which Election afterwards, *to wit*, upon the Day of in the ſaid Year of our Lord 1734, was had at the ſaid Borough) by his the ſaid *C.*'s promiſing to advance and pay unto the ſaid *G. G.* the Sum of five Pounds of lawful Money of *Great Britain*, *to wit*, at aforeſaid in

in the County aforeſaid, as and for a Reward to the ſaid *G. G.* in that Behalf, contrary to the Form of the ſaid Statute in ſuch Caſes lately made and provided; whereby, and by Force of the ſaid Statute in ſuch Caſes lately made and provided, an Action accrewed to *A. B.* to demand and have of the ſaid *C.* another Sum of five hundred Pounds, other Parcel of the ſaid two thouſand Pounds. And the ſaid *A. B.* further ſaith, that the ſaid *C.* not regarding the ſaid Statute in ſuch Caſes lately made and provided, nor fearing the Penalty therein contained, after the ſaid twenty-fourth Day of *June* in the Year of our Lord 1729, *to wit*, upon the Day of in the ſaid Year of our Lord 1734, at aforeſaid in the County aforeſaid, did corrupt the ſaid *G. G.* to give his Vote for him the ſaid *C.* to be choſen one of the Members for the ſaid Borough of in the ſaid County of *Cornwall*, to ſerve for the Commons in the then next Parliament of *Great Britain*, in an Election then ſhortly to be had of Members to ſerve for the Commons in the ſaid Parliament for the ſaid Borough (he the ſaid *G. G.* then claiming to have a Right to vote in the ſaid Election, and which Election afterwards, *to wit*, upon the ſaid Day of in the ſaid Year of our Lord 1734. was had at the ſaid Borough) by his the ſaid *C.*'s advancing and paying unto the ſaid *G. G.* the Sum of five Pounds of lawful Money of *Great Britain*, *to wit*, at aforeſaid in the County aforeſaid, as

and

and for a Reward to the ſaid *G. G.* in that Behalf, contrary to the Form of the ſaid Statute in ſuch Caſes lately made and provided; whereby, and by Force of the ſaid Statute in ſuch Caſes lately made and provided, an Action accrewed to the ſaid *A. B.* to demand and have of the ſaid *C.* another Sum of five hundred Pounds, Remainder of the ſaid two thouſand Pounds: Yet the ſaid *C.* (although often required) hath not paid to the ſaid *A. B.* the ſaid two thouſand Pounds; but hath hitherto refuſed, and ſtill doth refuſe to pay the ſame to him; whereby he ſays he is prejuduced, and hath Damages to the Value of one hundred Pounds; and thereupon he brings Suit, *&c.*

Plea Nil Debet.

And the ſaid *C.* by *A.S.* his Attorney comes and defends the Force and Injury, when, where and as the Court ſhall think fit; and ſays that he doth not owe the ſaid *A. B.* the ſaid Sum of two thouſand Pounds, or any Part thereof, in Manner and Form as the ſaid *A. B.* above againſt him complains; and of this he puts himſelf upon his Country; and the ſaid *A.* doth the like. Therefore let a Jury come before our Lord the King at *Weſtminſter*, on *Thurſday* next after the *Octave* of the Purification of the Bleſſed Virgin *Mary*, who are in no ways of Kin either to the ſaid *A.* or to the ſaid *C.* to take Cognizance upon their Oaths of the whole Truth of the Premiſſes; becauſe as well the ſaid *C.* as the ſaid *A.* have put themſelves upon that Jury. The ſame is given to the Parties aforeſaid, at the ſame Place.

Iſſue. Venire *awarded.*

Hilary

Hilary *Term in the Ninth Year of the Reign of King* George *the Second.*

Southampton, *to wit*, *H. R.* complains of *W. G.* in the Cuſtody of the Marſhal of the *Marſhalſea* of our Lord the King, being before the King himſelf, in a Plea, that he render to the ſaid *H.* one thouſand Pounds, which he owes to the ſaid *H.* and unjuſtly detains; For that whereas, on the Day of in the Year of the Reign of his preſent Majeſty, there iſſued out of his ſaid Majeſty's Court of *Chancery* at *Weſtminſter* in the County of *Middleſex*, a certain Writ of his ſaid Majeſty's under the Great Seal of *Great Britain*, directed to the then Sheriff of his Majeſty's County of *Southampton*; by which ſaid Writ his ſaid Majeſty reciting, That whereas by the Advice and Aſſent of his ſaid Majeſty's Counſel for certain arduous and urgent Affairs touching his ſaid Majeſty, the State and Defence of his Kingdom of *Great Britain*, and the Church, his ſaid Majeſty had ordered a certain Parliament to be holden at his ſaid Majeſty's City of *Weſtminſter* the Day of then next enſuing, there to treat and have Conference with the Prelates, Great Men and Peers of his ſaid Majeſty's Realm, did Command and ſtrictly Injoin the ſaid Sheriff, that Proclamation being made in his next County-Court after the Reception of that his ſaid Majeſty's Writ to be holden at the Time and Place aforeſaid

Declaration in Debt on the ſame Statute in another Form.

ſaid, two Knights girt with Swords, of the moſt fit and diſcreet of the ſaid County, and of every City of that County two Citizens, and of every Borough two Burgeſſes of the moſt diſcreet and ſufficient, freely and indifferently by them, who at ſuch Proclamation ſhould be preſent, the ſaid Sheriff ſhould cauſe to be Elected, according to the Form of the Statute in that Caſe made and provided; and the Name of ſuch Knights, Citizens and Burgeſſes ſo elected, in certain Indentures thereupon to be made between the ſaid Sheriff and them who ſhould be preſent at ſuch Election to be inſerted (whether the Perſon ſo elected ſhould be preſent or abſent) and them at the ſaid Day and Place ſhould cauſe to come in ſuch Manner, that the ſaid Knights full and ſufficient Power for themſelves and the Commonalty of the ſame County, and the ſaid Citizens and Burgeſſes for themſelves and the Commonalty of the ſaid Cities and Boroughs, ſeverally for them, might have to do and conſent to thoſe Things which then and there by the Common Council of his ſaid Majeſty's Kingdom aforeſaid (with God's Aſſiſtance) ſhould happen to be ordained upon the Affairs aforeſaid; ſo that through Defect of ſuch Power, or by an improvident Election of ſuch Knights, Citizens and Burgeſſes, the ſaid Affairs might not in any wiſe remain unprovided for; Willing nevertheleſs that neither the ſaid Sheriff, or any other Sheriff of that his ſaid Majeſty's Kingdom aforeſaid, in any wiſe ſhould be elected, and

the

the ſaid Election in full County of the ſame Sheriff ſo made diſtinctly and openly, under the Seal of the ſame Sheriff and the Seals of them who ſhould be preſent at ſuch Election, the ſame Sheriff ſhould certify to his ſaid Majeſty in *Chancery* at the Day and Place aforeſaid, without Delay, remitting to his Majeſty one Part of the aforeſaid Indentures ſewed to the ſaid Writ, together with the ſaid Writ; by Virtue of which Writ *A. B.* Eſq; then, and until, at and after the Return of the ſaid Writ being Sheriff of the ſaid County of *Southampton*, afterwards and before the Return of the ſaid Writ, *to wit*, on the ſame Day of in the Year of our Lord at the Borough of aforeſaid in the ſaid County of *Southampton*, made his certain Precept in Writing, ſealed with the ſeal of his ſaid Office of Sheriff of the ſaid County of *Southampton*, and bearing Date the ſame Day and Year laſt mentioned, directed to the Mayor, Aldermen and Burgeſſes of the ſaid Town or Borough of aforeſaid within the ſaid County; by which ſaid Precept the ſaid Sheriff reciting, That whereas by the Advice and Conſent of Counſel of our ſaid Sovereign Lord the King, for diverſe weighty and urgent Affairs concerning our ſaid Sovereign Lord King, the Eſtate and Defence of the Kingdom, and the Church, our ſaid Sovereign Lord the King had Ordained, that a certain Parliament ſhould be held at the City of *Weſtminſter*,

minſter, on *Thurſday* the Day of then next enſuing, to have Conference with the Prelates, Great Men and Peers of the Realm; therefore the ſaid Sheriff, by Virtue of the ſaid Writ of our ſaid Sovereign Lord the King to him directed, required the ſaid Mayor, Alderman and Burgeſſes, and every of them, That they ſhould elect, or cauſe to be elected, by thoſe who ſhould be preſent, two Burgeſſes, Men of good Underſtanding, Wit, Knowledge and Diſcretion, freely and indifferently (Proclamation being firſt made, according to the Form of the Statute in that Caſe made and provided) to ſerve in the ſaid Parliament for the ſaid Town or Borough; and that they ſhould cauſe to be inſerted the Names of the Perſons ſo elected, in certain Indentures to be made between him the ſaid Sheriff and thoſe who ſhould make ſuch Election, whether the Perſons ſo elected be preſent or abſent; and ſo that the ſaid Burgeſſes ſhould have full Power and Authority for themſelves and the whole Commonalty of the ſaid Town or Borough to do and conſent to ſuch Things, as with God's Aſſiſtance in the ſaid Parliament ſhould happen to be ordained upon the Affairs aforeſaid; by Virtue of which ſaid Precept afterwards, and before the Return of the ſaid Writ, *to wit*, on the Day of in the ſaid Year of the Reign of his ſaid Majeſty, at the ſaid Town or Borough of in the County of *Southampton* aforeſaid, the Election of two Burgeſſes of the ſaid Town

or Borough, to ſerve as Burgeſſes of the ſaid Town or Borough at the then next Parliament to be holden as aforeſaid, was had and made. And thereupon *E. F.* of aforeſaid, Eſq; and *G. H.* of in the County of Eſq; were elected, and at the ſaid Return of the ſaid Writ were returned to ſerve as Burgeſſes for the ſaid Town or Borough in the ſaid Parliament, to be Holden as aforeſaid. The ſaid *W. G.* not regarding the Statute in that Caſe lately made and provided, nor fearing the Penalty contained therein, after the twenty-fourth Day of *June* in the Year of our Lord 1729. and after the Iſſuing the ſaid Writ, and before the ſaid Election of Burgeſſes in and for the ſaid Town or Borough of *to wit*, on the Day of aforeſaid, in the ſaid Year of the Reign of his ſaid Majeſty, at the ſaid Town or Borough of aforeſaid, did corrupt and procure *W. L.* who then and at the Time of the ſaid Election had a Right to vote in the ſaid Election, to give his Vote in the ſaid Election for the ſaid *E. F.* and *G. H.* by his the ſaid *W. G.*'s then and there corruptly agreeing with and promiſing the ſaid *W. L.* as a Reward for his the ſaid *W. L.*'s giving his Vote as aforeſaid, to pay and give him the ſaid *W. L.* the Sum of five Pounds five Shillings of lawful Money of *Great Britain*, contrary to the Form of the Statute in that Caſe lately made and provided; by Reaſon and Means of which ſaid corrupt Agreement, and Promiſe made as aforeſaid,

aforeſaid, the ſaid *W. L.* on the Day of aforeſaid in the Year laſt aforeſaid, at the ſaid Town or Borough of in the ſaid County of *Southampton*, gave his Vote for the ſaid *E. F.* and *G. H.* at and in the ſaid Election; whereby, and by Virtue of the ſaid Statute, an Action hath accrued to the ſaid *F. R.* to demand and have of the ſaid *W. G.* the ſaid five hundred Pounds, Parcel of the ſaid one thouſand Pounds. And alſo that the ſaid *W. G.* not regarding the ſaid Statute, nor fearing the Penalty therein contained, after the ſaid twenty-fourth Day of *June* in the ſaid Year of our Lord 1729, and after the Iſſuing the ſaid Writ, and before the above mentioned Election of Burgeſſes in and for the ſaid Town or Borough of *to wit*, on the ſaid Day of in the Year of the Reign of his ſaid Majeſty, at the ſaid Town or Borough of aforeſaid, did corrupt and procure another *W. L.* who then and at the Time of the aforeſaid Election, had a Right to vote in the ſaid Election, to give his Vote in the ſaid Election for the ſaid *E. F.* and *G. H.* by his the ſaid *W. G.* then and there corruptly agreeing with and promiſing the laſt named *W. L.* as a Reward for his ſo doing, to pay him the ſaid *W. L.* by way of Loan, the Sum of five Pounds five Shillings of lawful Money of *Great Britain*, contrary to the Form and Effect of the ſaid Statute; by Reaſon and Means of which ſaid corrupt Agreement and Promiſe laſt mentioned, the laſt

named *W. L.* afterwards, *to wit*, on the ſaid Day of in the laſt Year aforeſaid, at the ſaid Town or Borough of gave his Vote for the ſaid *E. F.* and *G. H.* at and in the ſaid Election; by Reaſon of which ſaid Premiſſes laſt mentioned, and by Virtue of the ſaid Statute, an Action hath accrued to the ſaid *F. R.* to demand and have of the ſaid *W. G.* another Sum of five hundred Pounds, the Reſidue of the ſaid one thouſand Pounds. Nevertheleſs the ſaid *W. G.* (although often required) has not yet paid to the ſaid *F. R.* the ſaid one thouſand Pounds, or any Part thereof, but has hitherto refuſed and ſtill refuſes to pay the ſame to the ſaid *F. R.* to the Damage of the ſaid *F. R.* of ten Pounds; and thereupon he brings Suit, *&c.*

——— for the Plaintiff.
——— for the Defendant.

Pledges of Proſecuting { *John Doe*, *Richard Roe.*

Pleas before our Lord the King at Weſtminſter, *of the Term of the Holy* Trinity *in the Year of the Reign of our Sovereign Lord* George *the Second, now King of* Great Britain, *&c.* Roll.

Memorandum of a Declaration of a preceding Term.

London, *to wit.* BE it remembered, That heretofore, *to wit*, in *Eaſter* Term laſt paſt, before our Lord the King at *Weſtminſter* came *Joſiah Bacon* by his Attorney, and brought into the Court of our ſaid Lord the King then there, his Bill againſt *David Debary*, otherwiſe called *David Debary* of *London*, Merchant, in the Cuſtody of the Marſhal, *&c.* of a Plea of Debt, and there are Pledges of Proſecuting, *to wit*, *John Doe* and *Richard Roe*; which ſaid Bill follows in theſe Words, *to wit*, London, *to wit*, *Joſiah Bacon* complains of *David Debary*, otherwiſe called *David Debary* of *London*, Merchant, being in the Cuſtody of the Marſhal of the *Marſhalſea* of our Lord the King, before the King himſelf, of a Plea, that he render to him ſix hundred Pounds lawful Money of *Great Britain*, which he owes him, and unjuſtly detains; for that, *to wit*, that whereas the ſaid *David* on the eighth Day of *November* in the Year of our Lord at *London*, *to wit*, in the Pariſh of Saint *Mary le Bow* in the Ward of

Declaration on Arbitration Bond.

If 2 submit themselves to y award of J.S. & the award a Collateral Matter to be done as many to be p.d, no action on y Case lyes for not performing it, nor an action of Debt because there was no money to be given. 1 Rolls Abri. fo: 7

of *Cheap*, by his Writing Obligatory, ſealed with the Seal of the ſaid *David*, and to the Court of our Lord the King now here ſhewn, whoſe Date is the ſame Day and Year, acknowledged himſelf to be bound to the ſaid *Joſiah* in the ſaid ſix hundred Pounds to be paid to the ſaid *Joſiah*, when he ſhould be thereunto required; yet the ſaid *David*, although often required, *&c.* has not yet paid the ſaid ſix hundred Pounds to the ſaid *Joſiah*, but has hitherto entirely refuſed, and ſtill doth refuſe to pay him the ſame; to the Damage of the ſaid *Joſiah* of one hundred Pounds; and thereupon he brings Suit, *&c.*

And now at this Day, *to wit*, *Friday* next after the Morrow of the Holy *Trinity* in this ſame Term, to which Day the ſaid *David* had Leave to imparle to the ſaid Bill, and then to anſwer, *&c.* before our Lord the King at *Weſtminſter* came as well the ſaid *Joſiah* by his Attorney aforeſaid, as the ſaid *David* by his Attorney, and the ſaid *David* defends the Force and Injury, when, *&c.* and prays Oyer of the ſaid Writing Obligatory; and it is read to him in theſe Words, *to wit*, (the Obligation *in hæc Verba*) And he prays alſo Oyer of the Condition of the ſaid Writing Obligatory; and it is read to him in theſe Words, *to wit*, The Condition of this Obligation is ſuch, that if the above bounden *David Debary*, for and on Behalf of *Jacob Dernyter* of *Hamborough*, Merchant, his Executors and Adminiſtrators, do and ſhall well and truly

Imparlance.

Oyer prayed.

Condition

ſtand to, obey, abide, obſerve, perform, fulfil and keep the Award, Arbitrament, Order, final End, Determination and Judgment of *Maurice Williams*, *Nicholas Cutler* and *Michael Milford* of *London*, Merchants, or any two of them, Arbitrators, as well on the Part and Behalf of the above-named *Joſiah Bacon*, as of the ſaid *David Debary*; and by their mutual Aſſent and Conſent, indifferently elected, named and choſen to arbitrate, award, order, judge, determine, and a final End to make of, for, upon and concerning all and all Manner of Action and Actions, Cauſe and Cauſes of Actions, Suits, Debts, Accounts, Reckonings, Sum and Sums of Money, Covenants, Contracts, Promiſſes, Treſpaſſes, Damages, Bonds, Bills, Specialties, Judgments, Extents, Executions, Strifes, Differences, Controverſies, Matters, Claims and Demands whatſoever, as now are, or at any Time before the Date above written have been moved, ſtirred up, or depending between the ſaid *David Debary*, as Attorney to the ſaid *Jacob Dernyter* of the one Part, and the ſaid *Joſiah Bacon* of the other Part, for, touching or concerning certain Accounts between the ſaid *Joſiah Bacon* and the ſaid *Jacob Dernyter*, ſo as the ſaid Award, Arbitrament, Order, final End, Determination, and Judgment of the ſaid Arbitrators, or any two of them, of and upon the Premiſſes, be made and ſet down in Writing indented under their Hands and Seals, and be delivered or ready to be delivered up unto the ſaid Parties

Parties reſpectively in Difference, requiring the ſame, at or in the new Dwelling of *John Chambers*, Scrivener, Situate in *Lombard-ſtreet*, *London*, on or before the one and twentieth Day of this Inſtant *November*; then this Obligation to be void, or elſe to ſtand in full Force and Virtue. Which being read and heard, the ſaid *David Debary* ſays, that the ſaid *Joſiah Bacon* ought not to have or maintain his ſaid Action thereupon againſt him, becauſe he ſays, that the ſaid *Maurice Williams*, *Nicholas Cutler* and *Michael Milford* in the ſaid Condition named, or any two of them, did not make any Arbitrament in Writing indented under their Hands and Seals of, for or concerning the Premiſſes aforeſaid, in the ſaid Condition above ſpecified, on or before the one and twentieth Day of *November* in the ſaid Condition mentioned, according to the Form and Effect of the ſaid Condition. And this he is ready to verify; wherefore he prays Judgment, whether the ſaid *Joſiah Bacon* ought to have or maintain his ſaid Action thereupon againſt him, *&c.*

Plea that Arbitrators made no Award.

And the ſaid *Joſiah Bacon* ſays, that he by any Thing by the ſaid *David Debary* above by Pleading alledged, ought not to be barred from having his Action thereupon againſt the ſaid *David*, becauſe he ſays, that after the making the ſaid Writing Obligatory, *to wit*, on the one and twentieth Day of *November* in the Year of our Lord in the ſaid Condition ſpecified, at *London* aforeſaid, in the Pariſh and Ward afore-

Replication an Award made.

aforeſaid, the ſaid *Nicholas Cutler* and *Michael Milford*, two Arbitrators in the ſaid Condition abovementioned, took upon themſelves the Burden of Arbitrating and Ordering of and upon the Premiſſes in the ſaid Condition above mentioned, and made their Award in Writing indented under their Hands and Seals between the Parties, and of and upon the Premiſſes in the ſaid Condition mentioned; by which Arbitrament produced here in Court, the Arbitrators reciting, that whereas the ſaid *David* for and on Behalf of *Jacob Dernyter* of *Hamborough*, Merchant, and the ſaid *Joſiah*, by interchangeable Obligations, bearing Date the eighth Day of the then inſtant *November*, became bound to each other in ſix hundred Pounds, conditioned to ſtand to the Award of the ſaid *Maurice Williams*, *Nicholas Cutler* and *Michael Milford*, or any two of them, mutually choſen between them to judge, determine and make final End of and in all and all Manner of Action and Actions, Cauſe and Cauſes of Action, Suits, Debts, Accounts, Reckonings, Sum and Sums of Money, Covenants, Contracts, Promiſes, Treſpaſſes, Damages, Bonds, Bills, Specialties, Judgments, Extents, Executions, Strifes, Differences, Controverſies, Matters, Claims and Demands whatſoever, which then were, or at any Time before the Date of the ſaid Writing Obligatory had been moved, ſtirred up, or were depending between the ſaid *David Debary* (as Attorney of the ſaid *Jacob Dernyter*) and the ſaid *Joſiah*

Award ſet forth.

Joſiah Bacon, touching certain Accounts between the ſaid *Joſiah Bacon* and the ſaid *Jacob Dernyter*, ſo as the ſaid Arbitrament and Determination of the ſaid Arbitrators be made in Writing, indented under their, or any two of their Hands and Seals, ready to be delivered to the ſaid Parties in Difference, requiring the ſame at or in the then and now Dwelling Houſe of *John Chambers*, Scrivener, ſituate in *Lombard-ſtreet*, *London*, upon or before the ſaid one and twentieth Day of *November*, as by the ſaid Bonds and Conditions thereof, more fully appears, The ſaid *Nicholas Cutler* and *Michael Milford* have arbitrated and ordered the ſaid *David Debary* his Executors, Adminiſtrators or Aſſigns, on the Behalf of the ſaid *Jacob Dernyter*, to pay or cauſe to be paid to the ſaid *Joſiah*, his Executors, Adminiſtrators or Aſſigns, the Sum of three hundred and forty-five Pounds, ſix Shillings and ten Pence Half-Penny, lawful Money of *Great Britain*, upon or before the Second Day of *January* then next; and have further arbitrated and ordered, that the ſaid *Joſiah Bacon* and the ſaid *David Debary* on the Behalf of the ſaid *Jacob Dernyter*, upon Payment of the ſaid Sum of Money as aforeſaid, ſhall ſign, ſeal and legally execute and deliver to the Uſe of each other good and ſufficient Releaſes of all and all manner of Actions, Cauſe and Cauſes of Action, Suits, Debts, Accounts, Reckonings, Sum and Sums of Money, Covenants, Contracts, Promiſes, Treſpaſſes, Damages, Bonds, Bills, Specialties, Judg-

ments, Extents, Executions, Strifes, Differences, Controverſies, Matters, Claims and Demands whatſoever touching the ſaid Accounts, as by the ſaid Arbitrament appears: And the ſaid *Joſiah* in Fact ſays, that the ſaid Arbitrament made in Form aforeſaid, afterwards, *to wit*, on the ſaid one and twentieth Day of *November* in the Year aforeſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, was delivered as well to the ſaid *Joſiah* as the ſaid *David*, according to the Form and Effect of the Condition of the ſaid Writing Obligatory; and the ſaid *Joſiah* further ſays, that although he the ſaid *Joſiah* from the Time of making the ſaid Arbitrament hitherto has well and truly obſerved, performed and kept, all and ſingular thoſe Things contained in the ſaid Arbitrament, that were on the Part of the ſaid *Joſiah* to be performed and fulfilled, according to the Form and Effect of the ſaid Arbitrament; alſo by Proteſting that the ſaid *David Debary*, from the Time of making the ſaid Arbitration, hithereto has not in any Thing obſerved, performed, or fulfilled the ſaid Arbitrament, according to the Form and Effect thereof, the ſaid *Joſiah* ſays, that the ſaid *David* has not paid or cauſed to be paid to the ſaid *Joſiah* the ſaid Sum of three hundred and forty-five Pounds ſix Shillings and ten Pence Half-Penny, upon or before the ſaid ſecond Day of *January*, which he then ought to have paid to him, according to the Form and Effect of the ſaid Arbitrament. And this he is ready to verify.

Proteſtando.

Breach aſſigned.

verify; wherefore he prays Judgment, and his ſaid Debt, together with his Damages by Occaſion of the detaining that Debt, to be adjudged to him, *&c.*

To this there was a Demurrer, and Joinder; and Judgment for the Defendant. See *Salk.* 70.

* Eaſter *Term in the Tenth Year of King* George *the Second.*

Middleſex, to wit, *Thomas Deveniſh* Aſſignee of Sir *William Rous* Knight, and Sir *Benjamin Rawling* Knight, Sheriff of the ſaid County of *Middleſex*, according to the Form of the Statute in ſuch Caſe lately made and provided, complains of *Richard Jones*, otherwiſe called *Richard Jones* of the Pariſh of St. *Martin's in the Fields* in the County of *Middleſex*, Gentleman, in the Cuſtody of the Marſhal of the *Marſhalſea* of our Lord the King, before the King himſelf, of a Plea that he render to him forty Pounds of lawful Money of *Great Britain*, which he owes him and unjuſtly detains, for that, *to wit*, that whereas the ſaid *Thomas Deveniſh*, after the firſt Day of *Trinity* Term in the Year of our Lord one Thouſand ſeven Hundred and [redacted] ſix, *to wit*, on the Twelfth Day of *February* in the Tenth Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, *&c.* at *Weſtminſter* in the ſaid County of *Middleſex*, ſued forth out of the Court of

Debt on a Bail-Bond.

the Date of ye Writ

* If Bail Bond be aſſigned with^in a Term wherein a Decl^n. on ſuch Bail bond is to be, entitle ſuch Decl^n. of ſome Day in ſuch Term after ye date of ye aſſignment, & not of ye firſt Day of ye Term, otherwiſe ye Decl^n. will be before cauſe of action

Bill of Middleſex *ſued out.*

of our Lord the King, before the King himſelf (the ſaid Court being then at *Weſtminſter* aforeſaid in the ſaid County of *Middleſex*) a certain Precept of our ſaid Lord the King, commonly called a Bill of *Middleſex*, directed to the Sheriff of the ſaid County of *Middleſex*, by which it was commanded to the ſaid Sheriff, that he ſhould take one *Onſlow Burriſh*, if he ſhould be found in his Bailiwick, and ſafely keep him, ſo that he might have his Body before our ſaid Lord the King at *Weſtminſter*, on *Wedneſday* next after fifteen Days from the Day of *Eaſter*, to anſwer the ſaid *Thomas Deveniſh* in a Plea of Treſpaſs, and alſo to a Bill of the ſaid *Thomas Deveniſh* againſt the ſaid *Onſlow Burriſh* for twenty Pounds upon Promiſe, according to the Cuſtom of the Court of our ſaid Lord the King, before the King himſelf to be exhibited; and that he ſhould have there then that Precept, which ſaid Precept afterwards, and before the Return thereof, *to wit*, on the 29th Day of *March* in the ſaid Tenth Year of his preſent Majeſty's Reign, at *Weſtminſter* aforeſaid in the County aforeſaid, was delivered to the ſaid Sir *William Rous* Knight, and Sir *Benjamin Rawling* Knight, then Sheriff of the ſaid County of *Middleſex*, to be executed in due Form of Law; by Virtue of which ſaid Precept, directed to the ſaid Sheriff of *Middleſex* in Form aforeſaid, the ſaid Sir *William Rous* Knight, and Sir *Benjamin Rawling* Knight, then and yet Sheriff of the ſaid County of *Middleſex*, afterwards, *to wit*, on the

his Majeſty's writ of Latitat [ſic]

the return of the writ

Defendant arreſted.

the ſaid 29th Day of *March* in the Tenth Year of his preſent Majeſty's Reign, at *Weſtminſter* aforeſaid in the County aforeſaid, took and arreſted the ſaid *Onſlow Burriſh*, and held and kept the ſaid *Onſlow* then and there in his Cuſtody by Virtue of the ſaid Precept and Arreſt: And alſo, whereas afterwards, *to wit*, on the Second Day of *April* in the Tenth Year of his preſent Majeſty's Reign, at *Weſtminſter* aforeſaid in the County aforeſaid, the ſaid *Onſlow Burriſh* being ſo taken, arreſted, detained and kept by the ſaid Sheriff of *Middleſex* as aforeſaid, and then at *Weſtminſter* aforeſaid in the ſaid County of *Middleſex*, remaining in Cuſtody of the ſaid Sheriff, by Virtue of the ſaid Precept, the ſaid *Richard Jones*, by his Writing Obligatory, ſealed with his Seal, and to the Court of our ſaid Lord the King now here ſhewn, the Date of which ſaid Writing Obligatory is the Day and Year laſt aforeſaid, acknowledged himſelf to be held and firmly bound to the ſaid Sir *William Rous* Knight, and Sir *Benjamin Rawling* Knight, then Sheriff of the ſaid County of *Middleſex* as aforeſaid, by the Name of Sir *William Rous* Knight, and Sir *Benjamin Rawling* Knight, Sheriff of the County of *Middleſex* aforeſaid, in the Sum of forty Pounds, lawful Money of *Great Britain*, to be paid to the ſaid Sheriff or his certain Attorney, his Executors, Adminiſtrators or Aſſigns, when he ſhould be thereunto required, with a Condition to the ſaid Writing Obligatory under

Bail-Bond given.

Condition.

derwritten, That if the ſaid *Onſlow Burriſh* ſhould appear before our Lord the King at *Weſtminſter* on the ſaid *Wedneſday* next after fifteen Days from the Day of *Eaſter*, to anſwer the ſaid *Thomas Deveniſh* in a Plea of Treſpaſs, and alſo to a Bill as aforeſaid for 20 *l.* upon Promiſe, that then the ſaid Obligation ſhould be void, or elſe to remain in full Force and Virtue; which ſaid Writing Obligatory, with the Condition thereunder written was taken by the ſaid Sheriff by Virtue of the ſaid Precept, and by Force of the Statute in ſuch Caſe lately made and provided: And whereas the ſaid *Onſlow Burriſh* did not appear before our ſaid Lord the King at *Weſtminſter* on the ſaid *Wedneſday* next after 15 Days from the Day of *Eaſter*, in the Condition aforeſaid mentioned, according to the Form and Effect of that Condition; by which the ſaid Writing Obligatory became forfeited; and whereas afterwards, *to wit*, on the fourth Day of *May* in the Year laſt mentioned, at *Weſtminſter* aforeſaid in the ſaid County of *Middleſex*, the ſaid Writing Obligatory being ſo forfeited, and the Money therein mentioned, or any Part thereof, not being paid, the ſaid Sir *William Rous* Knight, and Sir *Benjamin Rawling* Knight, Sheriff of the ſaid County of *Middleſex*, by the Name of Sir *William Rous* Knight, and Sir *Benjamin Rawling* Knight, Sheriff of the ſaid County of *Middleſex*, at the Requeſt and Charges of the ſaid *Thomas Deveniſh*, aſſigned to the ſaid *Thomas Deveniſh* the ſaid Writing Obligatory

Default made.

Bond forfeited.

ligatory, ſo as aforeſaid made, for the Appearance of the ſaid *Onſlow Burriſh*, by endorſing the ſaid Aſſignment on the ſaid Writing Obligatory, and by then and there atteſting the ſaid Aſſignment under his Hand and Seal in the Preſence of two credible Witneſſes, *to wit*,
and according to the Form of the Statute in ſuch Caſe made and provided; which ſaid Aſſignment (the Date of which is the ſaid 4th Day of *May* in the Year laſt aforeſaid) is alſo to the ſaid Court of our ſaid Lord the King now here ſhewn; by Reaſon of which ſaid Premiſſes, according to the Form of the Statute in that Caſe made and provided, an Action hath accrued to the ſaid *Thomas Deveniſh*, as Aſſignee of the ſaid Sir *William Rous* Knight, and Sir *Benjamin Rawling* Knight, Sheriff of the ſaid County of *Middleſex* as aforeſaid, to demand and have of the ſaid *Richard Jones* the ſaid Sum of forty Pounds. Nevertheleſs, the ſaid *Richard Jones*, (although often required, *&c.*) hath not yet paid the ſaid forty Pounds to the ſaid *Thomas Deveniſh*, but has hitherto refuſed, and ſtill doth refuſe to pay the ſame to the ſaid *Thomas Deveniſh*, to the Damage of the ſaid *Thomas*, of Ten Pounds; and thereupon he brings Suit, *&c.*

——— for the Plaintiff.
——— for the Defendant.

Pledges of Proſecuting { *John Doe*, and *Richard Roe.*

Hilary

Hilary *Term in the* *Year of* &c.

Memorandum of ſame Term with Declaration.

Middleſex, *to wit*, Be it remembered, That on *Friday* next after the Octave of St. *Hilary* in this ſame Term, before our Lord the King at *Weſtminſter* came *A. B.* Eſq; and *C.* his Wife, by *Harwood Auberry* their Attorney, and brought into the Court of our ſaid Lord the King then there, their Bill againſt *D. E.* Eſq; otherwiſe called *D. E.* of &c. Eſq; in the Cuſtody of the Marſhal of the *Marſhalſea* of our ſaid Lord the King, before the King himſelf, of a Plea of Debt, and there are Pledges of proſecuting *to wit*, *John Doe* and *Richard Roe*; which ſaid Bill follows in theſe Words, *Middleſex*, to wit, *A. B.* Eſq; and *C.* his Wife, complain of *D. E.* Eſq; otherwiſe called *D. E.* of &c. Eſq; in the Cuſtody of the Marſhal, &c. of a Plea that he render to them five hundred Pounds of lawful Money of *Great Britain*, which he owes and unjuſtly detains from them; for that the *D. E.* on the 14th Day of *May* in the Year of our Lord One Thouſand ſeven Hundred and Thirty-four, at *Weſtminſter* in the County of *Middleſex* aforeſaid, by his certain Writing Obligatory, ſealed with the Seal of him the ſaid *D. E.* and now ſhewed here to the Court of our ſaid Lord the King, the Date whereof is the ſame Day and Year, acknowledged himſelf to be held and firmly bound unto the ſaid *C.* whilſt ſole, by the Name of *C. L.* of the Pariſh of in the County of Spinſter, in the ſaid 500 *l.* to be paid unto her the ſaid *C.*

Debt by Baron and Feme, on a Bond to Feme while ſole.

1 when

when he ſhould be thereunto required; yet the ſaid *D. E.* (although by the ſaid *C.* whilſt ſole, and after her Inter-marriage with the ſaid *A. B.* by them the ſaid *A. B.* and *C.* was often required, &c.) the ſaid five hundred Pounds unto the ſaid *C.* whilſt ſole, or after her Inter-marriage with the ſaid *A. B.* unto them the ſaid *A. B.* and *C.* or either of them, hath not yet paid, but hath hitherto abſolutely refuſed, and ſtill doth refuſe to pay the ſame; wherefore they the ſaid *A. B.* and *C.* ſay that they are prejudiced, and have Damage, to the Value of 20 *l.* and thereof they bring their Suit, &c.

And the ſaid *D. E.* by *Thomas Manning* his Attorney, comes and defends the Force and Injury when, &c. and prays Oyer of the ſaid Writing; and it is read to him in theſe Words: Know all Men, &c. and he alſo prays Oyer of the Condition of the ſaid Writing; and it is likewiſe read to him in theſe Words, *to wit*, The Condition of this Obligation is ſuch, &c. which being read and heard, he the ſaid *D. E.* ſaith, That the ſaid *A. B.* and *C.* his Wife, ought not to have their ſaid Action againſt him, becauſe he ſaith, That he the ſaid *D. E.* on the ſaid fourteenth Day of *May* in the ſaid Year of our Lord one Thouſand ſeven Hundred and Fourteen, at *Weſtminſter* aforeſaid, did make, ſeal, and as his Act and Deed deliver unto the ſaid *C.* when ſole, the Writing herein before mentioned and ſet forth: But he the ſaid *D. E.* ſaith, That

Oyer prayed.

Plea that an Interlineation was made after executing; Et ſic non eſt factum.

That the Condition thereof, at the Time of the Sealing and Delivery of the ſame by him the ſaid *D. E.* was, and was thereunto ſubſcribed in the Words and Figures following, *to wit*, The Condition of this Obligation is ſuch, That if the above-bounden *D. E.* his Heirs, Executors or Adminiſtrators, do well and truly pay, or cauſe to be paid, unto the above named *C.* the Annuity of One and Twenty Pounds of lawful Money of *Great Britain*, by quarterly Payments, on the four moſt uſual Feaſts or Quarter-Days in the Year, that is to ſay, *Michaelmas* Day, *Chriſtmas* Day, *Lady* Day, and *Midſummer* Day, the firſt Payment thereof to be made on the nine and twentieth Day of *September* now next enſuing the Date of theſe Preſents, or within fourteen Days after; then this Obligation to be void, or elſe to remain in full Force and Virtue: And the ſaid *D. E.* further ſaith, That after the Sealing and Delivering of the ſaid Writing by him the ſaid *D. E.* with that ſame Condition as aforeſaid thereunto ſubſcribed, *to wit*, the ſaid fourteenth Day of *May* in the ſaid Year of our Lord one Thouſand ſeven hundred and thirty-four, at *Weſtminſter* aforeſaid, he the ſaid *D. E.* at the Requeſt of the ſaid *C.* did interline in that ſame Condition between the Word (*Britain*) and the Word (by) theſe Words following, *to wit*, (yearly and every Year during the natural Life of the ſaid *C.*) as theſe Words ſtand and appear in the ſaid Condition, of which Oyer is above given; and ſo he the ſaid *D. E.*

ſaith, That the aforeſaid Writing, with the above mentioned Condition, of which Oyer is above given, is not the Deed of him the ſaid *D. E.* and of this he puts himſelf upon the Country.

Hilary *Term in the Ninth Year of King* George *the Second.*

Middleſex, to wit, *Thomas Tickle* complains of *Ephraim Derby*, in the Cuſtody of the Marſhal, *&c.* in a Plea that he render to the ſaid *Thomas* ten Pounds, which he owes to him and unjuſtly detains, *&c.* for that whereas, the ſaid *Ephraim* after the firſt Day of *May* in the Year of our Lord One Thouſand ſeven Hundred and five, *to wit*, on the twenty-ſecond Day of *May* in the Year of our Lord one Thouſand ſeven Hundred and thirty-four, at *Weſtminſter* in the ſaid County, made his certain Note in Writing ſubſcribed with his own Hand, commonly called a Promiſſory Note, bearing Date the ſame Day and Year, by which Note the ſaid *Ephraim* promiſed to pay to the ſaid *Thomas*, or his Order, five Pounds, ſix Months after the Date thereof, for Value received by the ſaid *Ephraim*; and the ſaid *Ephraim* did not pay to the ſaid *Thomas* the ſaid five Pounds mentioned in the ſaid Note, at the End of the ſaid ſix Months therein mentioned; and the ſaid *Thomas* did not make any Order of and concerning the Payment of the ſaid five

Debt on a Promiſſory Note.

Pounds, by Reaſon of which an Action has accrued to the ſaid *Thomas*, to demand and have of the ſaid *Ephraim* the ſaid five Pounds, Parcel of the ſaid ten Pounds: And whereas the ſaid *Ephraim* afterwards, *to wit*, on the firſt Day of *March* in the Year laſt mentioned, at *Weſtminſter* aforeſaid, borrowed of the ſaid *Thomas* five Pounds, Reſidue of the ſaid ten Pounds, to be paid to the ſaid *Thomas* when he ſhould be requeſted to pay the ſame: Nevertheleſs, the ſaid *Ephraim* (although often requeſted) hath not paid to the ſaid *Thomas* the ſaid ten Pounds, or any Part thereof, but hath hitherto denied, and ſtill doth deny to pay the ſame to the ſaid *Thomas*, to the Damage of the ſaid *Thomas* of ten Pounds; and thereupon he brings Suit, *&c.*

Debt for Money borrowed.

Pledges, *&c.*

As yet of Michaelmas *Term*; *Witneſs* Philip *Lord* Hardwicke.

Middleſex, *to wit.* SARAH *Bulkley* Widow, Adminiſtratrix of all and ſingular the Goods and Chattels, Rights and Credits, which were the Goods and Chattels, Rights and Credits of *Edmund Percival* deceaſed at the Time of his Death, who died inteſtate, puts in her Place *Robert Richardſon* her Attorney, againſt *John Warburton* and *Mary* his Wife, Executrix of the laſt Will and Teſtament of *William Bury* deceaſed, of a Plea of Treſpaſs on the Caſe.

Warrant of Attorney for Plaintiff Adminiſtratrix, againſt Defendants Baron and Feme Executrix.

Middleſex

Middleſex, to wit, *John Warburton* and *Mary* his Wife, Executrix of the laſt Will and Teſtament of *William Bury* deceaſed, put in their Place *Walter Jobber* their Attorney, at the Suit of *Sarah Bulkley* Widow, Adminiſtratrix of all and ſingular the Goods and Chattels, Rights and Credits, which were the Goods and Chattels, Rights and Credits of *Edmund Percival* deceaſed at the Time of his Death, who died inteſtate in the Plea aforeſaid. *Warrant of Attorney for Defendant.*

Middleſex, *to wit*, Be it remembered, That heretofore, that is to ſay, of *Eaſter* Term laſt paſt, before our Lord the King at *Weſtminſter* came *Sarah Bulkley* Widow, Adminiſtratrix of all and ſingular the Goods and Chattels, Rights and Credits, which were the Goods and Chattels, Rights and Credits of *Edmund Percival* deceaſed at the Time of his Death, who died inteſtate, by *Robert Richardſon* her Attorney, and brought here into the Court of our ſaid Lord the King then there, her certain Bill againſt *John Warburton* and *Mary* his Wife, Executrix of the laſt Will and Teſtament of *William Bury* deceaſed, being in the Cuſtody of the Marſhal of the *Marſhalſea* of our ſaid Lord the King, before the King himſelf, of a Plea of Treſpaſs on the Caſe, and there are Pledges of proſecuting, *to wit*, *John Doe* and *Richard Roe*; which ſaid Bill follows in theſe Words; *to wit*, Middleſex *to wit*, *Sarah Bulkley* Widow, Adminiſtratrix of all and ſingular the Goods and Chattels, Rights and Credits, which were the Goods Memorandum *of a preceding Term.*

Indeb. Aſſ. *for Meat, Drink, &c. found and provided by Inteſtate for divers Perſons at Requeſt of Teſtator.*

Goods and Chattels, Rights and Credits of *Edmund Percival* deceaſed at the Time of his Death, who died inteſtate, complains of *John Warburton* and *Mary* his Wife, Executrix of the laſt Will and Teſtament of *William Bury* deceaſed, being in the Cuſtody of the Marſhal of the *Marſhalſea* of our Lord the King, before the King himſelf, for that whereas the ſaid *William* in his Life-time, and in the Life-time of the ſaid *Edmund*, *to wit*, on the firſt Day of *April* in the Year of our Lord one Thouſand ſeven Hundred and Thirty-one, at *Weſtminſter* in the ſaid County of *Middleſex*, was indebted to the ſaid *Edmund* in thirty Pounds of lawful Money of *Great Britain*, for Meat, Drink, Waſhing, Lodging, Apparel, Nurſing, and other Neceſſaries found and provided by the ſaid *Edmund* for divers Perſons, at the ſpecial Inſtance and Requeſt of the ſaid *William*; and being ſo indebted, the ſaid *William* in Conſideration thereof, afterwards in the Life-time of the ſaid *William*, and in the Life-time of the ſaid *Edmund*, *to wit*, on the ſame Day and Year at *Weſtminſter* aforeſaid in the County aforeſaid aſſumed upon himſelf, and then and there faithfully promiſed the ſaid *Edmund*, that he the ſaid *William* would pay to the ſaid *Edmund* the ſaid Sum of Money when he ſhould be thereunto afterwards requeſted.

Quantum Meruit *thereon.*

And whereas the ſaid *William* afterwards in his Life-time, and in the Life-time of the ſaid *Edmund*, *to wit*, on the ſame Day and Year at *Weſtminſter* aforeſaid in the County of

of *Middleſex* aforeſaid, in Conſideration that the ſaid *Edmund*, at the like ſpecial Inſtance and Requeſt of the ſaid *William*, had before that Time found and provided for divers other Perſons, other Meat, Drink, Waſhing, Lodging, Apparel, Nurſing and other Neceſſaries, aſſumed upon himſelf, and then and there faithfully promiſed the ſaid *Edmund*, that he the ſaid *William* would pay to the ſaid *Edmund* ſo much Money as he therefore reaſonably deſerved to have when he the ſaid *William* ſhould be thereunto afterwards requeſted; and the ſaid *Sarah* in Fact ſaith, That the ſaid *Edmund* did therefore reaſonably deſerve to have of the ſaid *William* thirty Pounds of like lawful Money of *Great Britain*, *to wit*, at *Weſtminſter* aforeſaid in the County aforeſaid, of which the ſaid *William* afterwards in his Life-time, and in the Life-time of the ſaid *Edmund*, *to wit*, on the ſame Day and Year at *Weſtminſter* aforeſaid in the County aforeſaid, had Notice: And whereas the ſaid *William* afterwards in his Life-time, and in the Life-time of the ſaid *Edmund*, *to wit*, on the ſame Day and Year at *Weſtminſter* aforeſaid in the County of *Middleſex* aforeſaid, was indebted to the ſaid *Edmund* in another Sum of thirty Pounds of like lawful Money of *Great Britain* for Work and Labour, at the like ſpecial Inſtance and Requeſt of the ſaid *William*, before that Time done and performed by the ſaid *Edmund* in and about divers Buſineſſes of the ſaid *William*, and for divers Sums of Money in and about the ſame Buſineſſes,

Indeb. Aſſ. *for Work done and Money expended thereon by Inteſtate, at Requeſt of Teſtator.*

ſineſſes, at the like ſpecial Inſtance and Requeſt of the ſaid *William*, paid and expended by the ſaid *Edmund*; and being ſo indebted, the ſaid *William* in Conſideration thereof, afterwards in the Life-time of the ſaid *William*, and in the Life-time of the ſaid *Edmund*, *to wit*, on the ſame Day and Year at *Weſtminſter* aforeſaid in the County aforeſaid, aſſumed upon himſelf, and then and there faithfully promiſed the ſaid *Edmund*, That he the ſaid *William* would pay to the ſaid *Edmund* the ſaid Sum of Money when he ſhould be afterwards thereunto requeſted: And whereas the ſaid *William* afterwards in his Life-time, and in the Life-time of the ſaid *Edmund*, *to wit*, on the ſame Day and Year at *Weſtminſter* aforeſaid in the County aforeſaid, in Conſideration that the ſaid *Edmund*, at the like ſpecial Inſtance and Requeſt of the ſaid *William*, had before that Time done and performed other Work and Labour in and about divers other Buſineſſes of the ſaid *William*, and had expended and paid divers other Sums of Money in and about the ſame laſt mentioned Buſineſſes, aſſumed upon himſelf, and then and there faithfully promiſed the ſaid *Edmund*, that he the ſaid *William* would pay to the ſaid *Edmund* ſo much Money as the ſaid *Edmund* reaſonably deſerved to have for his ſaid laſt mentioned Work and Labour, and ſo much Money as the ſaid *Edmund* had expended and paid in and about thoſe laſt mentioned Buſineſſes, when the ſaid *William* ſhould be thereunto afterwards requeſted; And the ſaid

Quantum Meruit *thereon.*

ſaid *Sarah* in Fact ſays, That the ſaid *Edmund* did reaſonably deſerve to have of the ſaid *William*, for the ſaid Work and Labour laſt mentioned, other thirty Pounds of like lawful Money of *Great Britain*, and that the ſaid *Edmund* had expended and paid about the ſame Buſineſſes other thirty Pounds of like lawful Money of *Great Britain*, *to wit*, at *Weſtminſter* aforeſaid in the County aforeſaid, of which the ſaid *William* afterwards in his Life-time, and in the Life-time of the ſaid *Edmund*, *to wit*, on the ſame Day and Year at *Weſtminſter* aforeſaid in the County aforeſaid, had Notice: Nevertheleſs the ſaid *William* in his Life-time, and the ſaid *Mary* whilſt ſhe was a Widow after his Death, and the ſaid *John* and *Mary* his Wife after their Intermarriage, not regarding the ſaid ſeveral Promiſes and Aſſumptions of the ſaid *William* made in Form aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *Edmund* in his Life-time, and the ſaid *Sarah* after his Death (to which ſaid *Sarah*, after the Death of the ſaid *Edmund*, *to wit*, on the Twenty-ſeventh Day of *March* in the Year of our Lord one Thouſand ſeven Hundred and Thirty-four at *Weſtminſter* aforeſaid, Adminiſtration of all and ſingular the Goods and Chattels, Rights and Credits, which were the Goods and Chattels, Rights and Credits of the ſaid *Edmund* at the Time of his Death, was committed by *Edmund* by Divine Permiſſion Biſhop of *London*) in this Reſpect, have not, nor hath

Adminiſtration committed to Plaintiff.

Admon by Biſhop of London vid. 306. for Admon by Archbiſhop of Cant.

hath any of them paid the ſaid ſeveral Sums of Money, or any Part thereof, to the ſaid *Edmund* in his Life-time, or to the ſaid *Sarah* after his Death; (although the ſaid *William* in his Life-time, and the ſaid *Mary* whilſt ſhe was a Widow after his Death, and the ſaid *John* and *Mary* after their Marriage, were reſpectively requeſted by the ſaid *Edmund* in his Life-time, and by the ſaid *Sarah* after his Death, to pay the ſame, *to wit*, at *Weſtminſter* aforeſaid in the County aforeſaid;) but they have wholly refuſed to pay the ſame; and the ſaid *John* and *Mary* ſtill refuſe to pay the ſame to the ſaid *Sarah*, to the Damage of the ſaid *Sarah* of forty Pounds; and thereupon ſhe brings Suit, and ſo forth: And the ſaid *Sarah* brings here into Court the Letters of Adminiſtration of the ſaid Biſhop, which teſtify the Commiſſion of the ſaid Adminiſtration to the ſaid *Sarah* in Form aforeſaid, the Date whereof is the Day and Year above-mentioned, in that Reſpect.

Profert in Cur. *of Letters of Adminiſtration.*

Imparlance. And now at this Day, that is to ſay, *Saturday* next after three Weeks from the Day of St. *Michael* in this ſame Term, to which Day the ſaid *John* and *Mary* had Leave to imparle to the ſaid Bill, and then to anſwer, and ſo forth, before our Lord the King at *Weſtminſter*, the ſaid *Sarah Bulkley* comes by her Attorney aforeſaid, and the ſaid *John* and *Mary*, although at the ſame Day ſolemnly required, come not, nor does the ſaid Attorney of the ſaid *John* and *Mary* ſay any Thing in Bar or Preclusion of the ſaid Action

Nil Dicit.

of

of the ſaid *Sarah Bulkley*; whereby the ſaid *Sarah Bulkley* remains thereof undefended againſt the ſaid *John* and *Mary*, and ſo forth; For which the ſaid *Sarah Bulkley* ought to recover her Damages ſuſtained by Occaſion of the Premiſſes: But becauſe it is unknown to the Court of our ſaid Lord the King now here, what Damages the ſaid *Sarah Bulkley* has by the Occaſion aforeſaid in this Behalf ſuſtained, the Sheriff is therefore commanded, that by the Oaths of twelve good and lawful Men of his Bailiwick he diligently enquire what Damages the ſaid *Sarah Bulkley* has ſuſtained, as well by Means of the Premiſſes aforeſaid, as for her Coſts and Charges by her about her Suit in this Behalf expended; and that he ſend the Inquiſition which he ſhall thereupon take to our Lord the King at *Weſtminſter* on *Friday* next after fifteen Days from the Day of St. *Hilary*, under his Seal and the Seals of them by whoſe Oaths he ſhall take that Inquiſition, together with the Writ of our ſaid Lord the King to him thereupon directed. The ſame Day is given to the ſaid *Sarah Bulkley* at the ſame Place: ℣ At which Day before our Lord the King at *Weſtminſter* the ſaid *Sarah Bulkley* came by her Attorney aforeſaid, and the Sheriff, *to wit*, Sir *William Rous* Knight, and Sir *Benjamin Rawling* Knight, Sheriff of the County of *Middleſex* aforeſaid, returned a certain Inquiſition taken at the Court-Houſe *Weſtminſter* in the County aforeſaid, on the Twenty-eighth Day of *January* in the tenth Year of the Reign of our

Interlocutory Judgment.

Inquiry awarded.

Return of ye Inquiry

℣ *the Continuance and Return there of Inquiry of.*

our Sovereign Lord *George* the Second, now King of *Great Britain*, *&c.* before the ſaid Sheriff, by Virtue of the ſaid Writ to him thereupon directed, on the Oaths of twelve good and lawful Men of his Bailiwick; whereby it is found, that the ſaid *Sarah* hath ſuſtained Damages by Reaſon of the Premiſſes aforeſaid, beſides her Coſts and Charges by her about her Suit in this Behalf expended, to Twenty-four Pounds fourteen Shillings, and for thoſe Coſts and Charges to twenty Shillings. It is therefore conſidered, That the ſaid *Sarah Bulkley* recover againſt the ſaid *John* and *Mary* her ſaid Damages found in Form aforeſaid by the ſaid Inquiſition; as alſo nine Pounds ſixteeen Shillings for her Coſts and Charges aforeſaid, by the Court of our Lord the King now here adjudged of Increaſe to the ſaid *Sarah Bulkley* by her Aſſent, which ſaid Damages in the whole amount to Thirty-five Pounds ten Shillings, to be levied of the Goods and Chattels which were of the ſaid *William Bury* at the Time of his Deceaſe, in the Hands of the ſaid *John* and *Mary* to be adminiſtred, if they have ſo much in their Hands; And if they have not ſo much in their Hands, then the ſaid twenty Shillings and nine Pounds ſixteen Shillings to be levied of the proper Goods and Chattels of the ſaid *John* and *Mary*.

Judgment ſigned 7th February 1736.

Trinity

Trinity *Term in the Tenth and Eleventh Years of the Reign of King* George *the Second.*

Againſt Baron and Feme on a Promiſſory Note of the Wife while Sole.

Middleſex, *to wit.* PHILIP *Hartwell* complains of *Henry George Rounds*, and *Elizabeth* his Wife (lately called *Elizabeth Hancock*, Widow) in Cuſtody of the Marſhal, and ſo forth; for that whereas the ſaid *Elizabeth* whilſt ſhe was Sole, after the firſt Day of *May* which was in the Year of our Lord one thouſand ſeven hundred and five, *to wit*, on the eleventh Day of *Auguſt* in the Year of our Lord one thouſand ſeven hundred and thirty-five, at *Weſtminſter* in the County of *Middleſex* aforeſaid, made a certain Note in Writing, commonly called a Promiſſory Note, ſubſcribed with the proper Hand and Name of the ſaid *Elizabeth*, bearing Date the ſame Day and Year laſt above mentioned; which ſaid Note the ſaid *Elizabeth* then and there delivered to the ſaid *Philip*; and by the ſame Note ſhe the ſaid *Elizabeth* (by her then Name of *Elizabeth Hancock*) promiſed to pay to the ſaid *Philip*, or his Order, three Months after the Date of the ſaid Note, one hundred and twenty-ſeven Pounds, for Value received by her the ſaid *Elizabeth*: By Reaſon whereof, and alſo by Force of the Statute in ſuch Caſe lately made and provided, the ſaid *Elizabeth* became liable to pay to the ſaid *Philip* the aforeſaid one hundred and twenty-ſeven Pounds

Pounds in the ſame Note mentioned, according to the Tenor of that Note; and being ſo liable the ſaid *Elizabeth* afterwards, whilſt ſhe was Sole, *to wit*, on the Day and Year laſt abovementioned, at *Weſtminſter* aforeſaid in the County aforeſaid, in Conſideration thereof aſſumed upon herſelf, and then and there faithfully promiſed the ſaid *Philip*, that ſhe the ſaid *Elizabeth* would pay to the ſaid *Philip* the ſaid Sum of Money, according to the Force, Form and Effect of the ſaid Note. And whereas the ſaid *Elizabeth* whilſt ſhe was Sole, *to wit*, on the firſt Day of *September* in the Year of our Lord one thouſand ſeven hundred and thirty-five aboveſaid, at *Weſtminſter* aforeſaid in the County of *Middleſex* aforeſaid, was indebted to the ſaid *Philip* in the Sum of one hundred and ſixty Pounds of lawful Money of *Great Britain*, for ſo much Money of the ſaid *Philip* by him the ſaid *Philip* to the ſaid *Elizabeth*, whilſt ſhe was Sole, and at her ſpecial Inſtance and Requeſt before that Time lent and advanced; and being therefore ſo indebted the ſaid *Elizabeth* whilſt ſhe was Sole, in Conſideration thereof, afterwards, *to wit*, the ſame Day and Year laſt aboveſaid, at *Weſtminſter* aforeſaid in the County aforeſaid, aſſumed upon herſelf, and then and there faithfully promiſed the ſaid *Philip*, that ſhe the ſaid *Elizabeth* would pay to him the ſaid *Philip* the aforeſaid Sum of one hundred and ſixty Pounds, when ſhe the ſaid *Elizabeth* ſhould be thereunto afterwards requeſted.

Money Lent to the Wife while Sole.

requeſted. And whereas the ſaid *Elizabeth* whilſt ſhe was Sole, *to wit*, on the ſaid firſt Day of *September* in the Year of our Lord one thouſand ſeven hundred and thirty-five aboveſaid, at *Weſtminſter* aforeſaid in the County of *Middleſex* aforeſaid, was indebted to the ſaid *Philip* in another Sum of one hundred and ſixty Pounds of like lawful Money of *Great Britain*, for ſo much Money of the ſaid *Philip* by the ſaid *Elizabeth* whilſt ſhe was Sole, for the Uſe of the ſaid *Philip*, before that Time had and received; and being therefore ſo indebted, the ſaid *Elizabeth* whilſt ſhe was Sole, in Conſideration thereof, afterwards, *to wit*, the ſame Day and Year laſt aboveſaid, at *Weſtminſter* aforeſaid in the County aforeſaid, aſſumed upon herſelf, and then and there faithfully promiſed the ſaid *Philip*, that ſhe the ſaid *Elizabeth* would pay to him the ſaid *Philip* the aforeſaid Sum of one hundred and ſixty Pounds laſt mentioned, when ſhe the ſaid *Elizabeth* ſhould be thereunto afterwards requeſted. And whereas the ſaid *Elizabeth* whilſt ſhe was Sole, *to wit*, on the ſaid firſt Day of *September* in the Year of our Lord one thouſand ſeven hundred and thirty-five aboveſaid, at *Weſtminſter* aforeſaid in the County of *Middleſex* aforeſaid, in Conſideration that the ſaid *Philip* (he the ſaid *Philip* then and for ſeveral Years before being an Apothecary, and the Art of an Apothecary there ſtill uſing and exerciſing) at the like Inſtance and Requeſt of the ſaid *Blizabeth* whilſt ſhe was Sole, before that Time had found

Money had and received by the Wife while Sole.

Quantum Meruit for Medicines for the Wife while Sole.

found and provided for the ſaid *Elizabeth* diverſe Medicines, Plaiſters, Ointments, and other Phyſical Neceſſaries; and alſo at the like ſpecial Inſtance and Reſpect of the ſaid *Elizabeth* whilſt ſhe was Sole, before that Time had prepared for and applied and adminiſtered to the ſaid *Elizabeth* whilſt ſhe was Sole diverſe other good and wholſome Medicines, Pills, Boluſſes, Electuaries, Cordials, Potions, Draughts, and other Neceſſaries to the Art aforeſaid belonging, in and about the Cure of the ſaid *Elizabeth* whilſt ſhe was Sole, of diverſe Weakneſſes, Pains and Infirmities, which the ſaid *Elizabeth* did labour under; and alſo, at the like ſpecial Inſtance and Requeſt of the ſaid *Elizabeth* whilſt ſhe was Sole, had done and performed Apothecary's Work and Labour, for the ſaid *Elizabeth*, aſſumed upon herſelf, and then and there faithfully promiſed the ſaid *Philip* that ſhe the ſaid *Elizabeth* would pay to him the ſaid *Philip* ſo much Money as he the ſaid *Philip* did therefore reaſonably deſerve to have, when ſhe the ſaid *Elizabeth* ſhould be thereunto afterwards requeſted. And the ſaid *Philip* in Fact ſays, that he the ſaid *Philip* therefore reaſonably deſerved to have of the ſaid *Elizabeth* while ſhe was Sole, the Sum of one hundred and ſixty Pounds of like lawful Money of *Great Britain*, *to wit*, at *Weſtminſter* aforeſaid in the County aforeſaid; whereof the ſaid *Elizabeth* whilſt ſhe was Sole, *to wit*, the ſame Day and Year

at *Weſtminſter* aforeſaid had Notice. And whereas the ſaid *Elizabeth* whilſt ſhe was Sole, *to wit*, on the ſaid firſt Day of *September* in the Year of our Lord one thouſand ſeven hundred and thirty-five aboveſaid, at *Weſtminſter* aforeſaid in the County of *Middleſex* aforeſaid, was indebted to the ſaid *Philip* in another Sum of one hundred and ſixty Pounds of like lawful Money of *Great Britain*, as well for diverſe other Medicines, Plaiſters, Ointments, and other Phyſical Neceſſaries by him the ſaid *Philip* for the ſaid *Elizabeth* whilſt ſhe was Sole, at her like Special Inſtance and Requeſt before that Time found and provided in and about the Cure of diverſe other Weakneſs, Pains and Infirmities, which the ſaid *Elizabeth* while ſhe was Sole did labour under, as for other Apothecaries Work and Labour of him the ſaid *Philip*, for the ſaid *Elizabeth* whilſt ſhe was Sole, at her like ſpecial Inſtance and Requeſt before that Time done and performed: And being therefore ſo indebted the ſaid *Elizabeth* whilſt ſhe was Sole, in Conſideration thereof, afterwards, *to wit*, the ſame Day and Year laſt aboveſaid, at *Weſtminſter* aforeſaid in the County aforeſaid, aſſumed upon herſelf, and then and there faithfully promiſed the ſaid *Philip*, that ſhe the ſaid *Elizabeth* would pay to him the ſaid *Philip* the aforeſaid Sum of one hundred and ſixty Pounds laſt mentioned, when ſhe the ſaid *Elizabeth* ſhould be thereunto

Indeb. Aſſum. *for Medicines for the Wife while Sole.*

Quantum Meruit *for Goods ſold and delivered to the Wife while Sole.*

unto afterwards requeſted. And whereas the ſaid *Elizabeth* whilſt ſhe was Sole, *to wit*, on the ſaid firſt Day of *September* in the Year of our Lord one thouſand ſeven hundred and thirty-five aboveſaid, at *Weſtminſter* aforeſaid in the County of *Middleſex* aforeſaid, in Conſideration that the ſaid *Philip*, at the like ſpecial Inſtance and Requeſt of the ſaid *Elizabeth*, before that Time had ſold and delivered to the ſaid *Elizabeth* whilſt ſhe was Sole, diverſe Goods, Wares, and Merchandizes, aſſumed upon herſelf, and then and there faithfully promiſed the ſaid *Philip*, that ſhe the ſaid *Elizabeth* would pay to him the ſaid *Philip* ſo much Money as the aforeſaid Goods, Wares and Merchandizes (at the Time of the Sale, and Delivery thereof) were reaſonably worth, when ſhe the ſaid *Elizabeth* ſhould be thereunto afterwards requeſted; and the ſaid *Philip* in Fact ſays, that the aforeſaid Goods, Wares and Merchandizes (at the Time of the Sale and Delivery thereof) were reaſonably worth another Sum of one hundred and ſixty Pounds of like lawful Money of *Great Britain*, *to wit*, at *Weſtminſter* aforeſaid in the County aforeſaid; whereof the ſaid *Elizabeth* whilſt ſhe was Sole, *to wit*, the ſame Day and Year at *Weſtminſter* aforeſaid had Notice. And

Indeb. Aſſ. *for Money laid out for the Wife while Sole.*

whereas the ſaid *Elizabeth* whilſt ſhe was Sole, *to wit*, on the ſaid firſt Day of *September* in the Year of our Lord one thouſand ſeven hundred and thirty-five aboveſaid, at *Weſtminſter* aforeſaid in the County of

Middleſex aforeſaid, was indebted to the ſaid *Philip* in another Sum of one hundred and ſixty Pounds of like lawful Money of *Great Britain*, for diverſe other Goods, Wares and Merchandizes of the ſaid *Philip*, by the ſaid *Philip* to the ſaid *Elizabeth* whilſt ſhe was Sole, at her like ſpecial Inſtance and Requeſt before that Time ſold and delivered: And being therefore ſo indebted, the ſaid *Elizabeth* whilſt ſhe was Sole, in Conſideration thereof, afterwards, *to wit*, the ſame Day and Year laſt aboveſaid, at *Weſtminſter* aforeſaid in the County aforeſaid, aſſumed upon herſelf, and then and there faithfully promiſed the ſaid *Philip*, that ſhe the ſaid *Elizabeth* would pay to him the ſaid *Philip* the aforeſaid Sum of one hundred and ſixty Pounds laſt mentioned, when ſhe the ſaid *Elizabeth* ſhould be thereunto requeſted. And whereas the ſaid *Elizabeth* whilſt ſhe was Sole, *to wit*, on the firſt Day of *September* in the Year of our Lord one thouſand ſeven hundred and thirty-five aboveſaid, at *Weſtminſter* aforeſaid in the County of *Middleſex* aforeſaid, was indebted to the ſaid *Philip* in another Sum of one hundred and ſixty Pounds of like lawful Money of *Great Britain*, for ſo much Money of the ſaid *Philip*, by the ſaid *Philip* for the ſaid *Elizabeth* whilſt ſhe was Sole, and to her Uſe, at the like ſpecial Inſtance and Requeſt of the ſaid *Elizabeth*, before that Time paid, laid-out and expended: And being therefore ſo indebted the ſaid *Elizabeth* whilſt

Indeb. Aſſ. *for Money laid out for the Wife while Sole.*

ſhe was Sole, in Conſideration thereof, afterwards, *to wit*, the ſame Day and Year aboveſaid, at *Weſtminſter* aforeſaid in the County aforeſaid, aſſumed upon herſelf, and then and there faithfully promiſed the ſaid *Philip*, that ſhe the ſaid *Elizabeth* would pay to him the ſaid *Philip* the aforeſaid Sum of one hundred and ſixty Pounds laſt mentioned, when ſhe the ſaid *Elizabeth* ſhould be thereunto afterwards requeſted. Yet the ſaid *Elizabeth* whilſt ſhe was Sole, and the ſaid *Henry George* and *Elizabeth* ſince their Intermarriage, not regarding the ſaid ſeveral Promiſes and Aſſumptions of the ſaid *Elizabeth* made in Form aforeſaid, but contriving and fraudently intending to deceive and defraud the ſaid *Philip* in this Behalf, the aforeſaid ſeveral Sums of Money, or any Part thereof, have not, nor hath either of them paid to the ſaid *Philip* (although the ſaid *Elizabeth* whilſt ſhe was Sole, *to wit*, the ſame Day and Year laſt aboveſaid, and the ſaid *Henry George* and *Elizabeth* ſince their Intermarriage, *to wit*, on the twentieth Day of *October* in the Year of our Lord one thouſand ſeven hundred and thirty-ſix, and often ſince, at *Weſtminſter* aforeſaid in the County aforeſaid, by the ſaid *Philip* have been thereunto reſpectively requeſted) but to pay thoſe Sums to the ſaid *Philip*, the ſaid *Elizabeth* whilſt ſhe was Sole, and the ſaid *Henry George* and *Elizabeth* ſince their Intermarriage, have altogether refuſed, and ſtill

Breach.

ſtill do refuſe, to the Damage of the ſaid *Philip* of two hundred Pounds. And thereupon he brings his Suit, *&c.*

——— for the Plaintiff.
Defendant in Cuſtody.
Pledges to proſecute { *John Doe*, and *Richard Roe.*

Of the Term of Saint Michael *in the Ninth Year of the Reign of King* George *the Second.*

Middleſex, *to wit*, *R. R.* Gent. one of *&c.* complains of *Onſlow Burriſh*, Gentleman, being in the Cuſtody of the Marſhal of the *Marſhalſea* of the Lord the King, before the King himſelf; for that whereas the ſaid *Onſlow*, after the firſt Day of *May* in the Year of our Lord one thouſand ſeven hundred and five, *to wit*, on the twenty-fifth Day of *September* in the Year of our Lord one thouſand ſeven hundred and twenty-ſeven, at *Weſtminſter* in the ſaid County, made a certain Note in Writing, ſubſcribed with his own Hand, commonly called a Promiſſory Note, bearing Date the ſame Day and Year laſt mentioned, by which Note the ſaid *Onſlow* promiſed to pay to Mrs. *Henrietta Smith*, or her Order, four Months after the Date of the ſaid Note, the Sum of ten Pounds for Value received by the ſaid

Indorſee of a Promiſſory Note againſt the Drawer.

25 Sept. 1727. *Note made.*

Payable in 4 Months.

Onſlow; and the ſaid Sum of Money being unpaid, the ſaid *Henrietta Smith* afterwards, *to wit*, on the twenty-eighth Day of *September* in the Year laſt aforeſaid, at *Weſtminſter* aforeſaid in the ſaid County, indorſed the ſaid Note, her own Hand being thereunto ſubſcribed, and by the ſaid Indorſement appointed the Contents of the ſaid Note to be paid to *Samuel Anderſon*, or his Order, for Value received; and the ſaid Sum of Money being unpaid, the ſaid *Samuel* afterwards, *to wit*, on the thirtieth Day of *September* in the Year laſt aforeſaid, at *Weſtminſter* aforeſaid in the ſaid County, indorſed the ſaid Note, his own Hand being thereunto ſubſcribed, and by the ſaid Indorſment appointed the Contents of the ſaid Note to be paid to the ſaid *Robert* or his order for Value received by the ſaid *Samuel*; of which Premiſſes the ſaid *Onſlow* afterwards, and after the End of the ſaid four Months, *to wit*, on the firſt Day of *May* in the Year of our Lord one thouſand ſeven hundred and thirty-two, at *Weſtminſter* aforeſaid in the ſaid County, had Notice; And by Reaſon of the Premiſſes, and by Force of the Statute in that Caſe lately made and provided, the ſaid *Onſlow* became liable to pay to the ſaid *Robert* the ſaid Sum of Money contained in the ſaid Note; and being ſo liable he the ſaid *Onſlow* afterwards, *to wit*, on the Day and Year laſt above-mentioned, at *Weſtminſter* aforeſaid in the ſaid County, aſſumed upon himſelf, and then and there faithfully promiſed the

Indorſed.

Indorſed again.

1 May 1732. *Notice to Defendant.*

and Aſſumpſit.

the ſaid *Robert*, that he the ſaid *Onſlow* would pay to the ſaid *Robert* the ſaid Sum of Money when he ſhould be requeſted to pay the ſame. And whereas the ſaid *On-* 25 Sept. 1727.
Onſlow afterwards, *to wit*, on the ſaid twen- *Another Note.*
ty-fifth Day of *September* in the Year of our Lord one thouſand ſeven hundred and twenty-ſeven aforeſaid, at *Weſtminſter* in the ſaid County, made a certain other Note in Writing, ſubſcribed with his own Hand, commonly called a Promiſſory Note, bearing Date the ſame Day and Year laſt aboveſaid, by which Note the ſaid *Onſlow* promiſed to pay to the ſaid Mrs. *Henrietta Smith*, or her Order, four Months after the Date of the ſaid Note, the Sum of ten Pounds for Value received by the ſaid *Onſlow*; and the ſaid Sum of Money laſt mentioned being unpaid, the ſaid *Henrietta Smith* afterwards, *to wit*, on the twenty-eighth Day 28 Sept. 1727
of *September* in the Year laſt aforeſaid, at *Weſtminſter* aforeſaid in the ſaid County, in- *Indorſed.*
dorſed the ſaid Note, her own Hand being thereunto ſubſcribed, and by the ſaid Indorſement appointed the Contents of the ſaid laſt mentioned Note to be paid to *Samuel Anderſon*, or his Order, for Value received; and the ſaid Sum of Money being unpaid, the ſaid *Samuel* afterwards, *to wit*, on the 7th Sept.
thirtieth Day of *Semptember* in the Year laſt 30. Sept. 1727
aforeſaid, at *Weſtminſter* aforeſaid in the ſaid County, indorſed the ſaid Note, his own *Indorſed again.*
Hand being thereunto ſubſcribed and by the ſaid Indorſement appointed the Contents of the ſaid Note to be paid to the ſaid *Ro-*

bert, or his Order, for Value received by the ſaid *Samuel*; of which Premiſſes the ſaid *Onſlow* afterwards, *to wit*, on the ſame Day and Year laſt aforeſaid, at *Weſtminſter* aforeſaid, had Notice; and by Reaſon of the Premiſſes, and by Force of the Statute in that Caſe lately made and provided, the ſaid *Onſlow* became liable to pay to the ſaid *Robert* the ſaid Sum of Money contained in the ſaid laſt mentioned Note, according to the Form and Effect of the ſaid Note; and the ſaid Sum of Money laſt mentioned being unpaid, the ſaid *Onſlow*, in Conſideration of the Premiſſes, afterwards, *to wit*, on the tenth Day of *May* in the Year of our Lord one thouſand ſeven hundred and thirty-three, at *Weſtminſter* aforeſaid in the ſaid County, paid to the ſaid *Robert* Part, *to wit*, the Sum of five Pounds of the ſaid ten Pounds laſt mentioned, and aſſumed upon himſelf, and then and there faithfully promiſed the ſaid *Robert*, that he the ſaid *Onſlow* would pay to the ſaid *Robert* the Reſidue of the ſaid Sum of Money contained in the ſaid laſt mentioned Note, when he ſhould be thereunto afterwards requeſted; yet the ſaid *Onſlow* not regarding his ſaid ſeveral Promiſes and Aſſumptions made in Form aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *Robert* in this Reſpect, has not paid to the ſaid *Robert* the firſt above-mentioned Sum of Money, or any Part thereof, or the Reſidue of

10 May 1733. *Defendant pays Part, and* Aſſumpſit *for the reſt.*

Breach.

of the ſaid laſt above-mentioned Sum of Money, or any further Part thereof (although the ſaid *Onſlow* afterwards, *to wit*, on the firſt Day of *October* in the Year of our Lord one thouſand ſeven hundred and thirty-five, at *Weſtminſter* aforeſaid, was requeſted by the ſaid *Robert* to pay him the ſame) but has hitherto wholly refuſed, and ſtill doth refuſe to pay the ſame to the ſaid *Robert* to the Damage of the ſaid *Robert* of twenty Pounds. And thereupon he brings Suit, *&c.*

Pledges of Proſecuting { *John Doe*, *Richard Roe.*

Trin. 8 & 9 *Geo.* 2.

London, to wit. MARK *Ratcliffe* complains of *Joſeph Northcott* in the Cuſtody of the Marſhal, *&c.* for that *to wit*, that whereas the ſaid *Joſeph* on the firſt Day of *March* in the Year of our Lord one Thouſand ſeven Hundred and Thirty-four at *London* aforeſaid, *to wit*, in the Pariſh of St. *Mary le Bow* in the Ward of *Cheap*, was indebted to the ſaid *Mark* in fifty Pounds of lawful Money of *Great Britain*, for the Freight of divers Goods and Merchandizes, before that Time carried by the ſaid *Mark* in his Veſſel for the ſaid *Joſeph*, at the ſpecial Inſtance and Requeſt of the ſaid *Joſeph*, and for other Labour, Work

Indebitatus aſſumpſit *for the Freight of Goods and Merchandizes.*

and Service before that Time done and performed by the ſaid *Mark* for the ſaid *Joſeph*, at the like ſpecial Inſtance and Requeſt of the ſaid *Joſeph*; and being ſo indebted, he the ſaid *Joſeph*, in Conſideration thereof afterwards, *to wit*, on the ſame Day and Year, at *London* aforeſaid in the Pariſh and Ward aforeſaid, did aſſume upon himſelf, and then and there faithfully promiſe the ſaid *Mark*, that he the ſaid *Joſeph* would pay to the ſaid *Mark* the ſaid Sum of Money when the ſaid *Joſeph* ſhould be requeſted to pay the ſame: And whereas the ſaid *Joſeph* afterwards, *to wit*, on the ſame Day and Year at *London* aforeſaid in the Pariſh and Ward aforeſaid, in Conſideration that the ſaid *Mark*, at the like ſpecial Inſtance and Requeſt of the ſaid *Joſeph*, had before that Time carried divers other Goods, Wares and Merchandizes on board another Veſſel of the ſaid *Mark*, for the ſaid *Joſeph*, and alſo had before that Time, at the like ſpecial Inſtance and Requeſt of the ſaid *Joſeph*, done and performed other Labour, Work and Service for the ſaid *Joſeph*, did aſſume upon himſelf, and then and there faithfully promiſe the ſaid *Mark*, that he the ſaid *Joſeph* would pay to the ſaid *Mark* ſo much Money as he therefore reaſonably deſerved to have when the ſaid *Joſeph* ſhould be requeſted to pay the ſame; and the ſaid *Mark* in Fact ſays, That he did therefore reaſonably deſerve to have of the ſaid *Joſeph* other fifty Pounds of like lawful Money of *Great Britain*, to wit,

Quantum meruit *for the Freight of Goods and Merchandizes.*

wit, at *London* aforeſaid in the Pariſh and Ward aforeſaid, of which the ſaid *Joſeph* had then and there Notice. Nevertheleſs, the ſaid *Joſeph* in no wiſe regarding his ſaid ſeveral Promiſes and Aſſumptions made in Form aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *Mark* in this Reſpect, has not paid to the ſaid *Mark* the ſaid ſeveral Sums, or any Part thereof (although the ſaid *Joſeph* afterwards, *to wit*, on the twenty-eighth Day of *May* in the Year of our Lord One Thouſand ſeven Hundred and Thirty-five, at *London* aforeſaid in the Pariſh and Ward aforeſaid, was requeſted by the ſaid *Mark* to pay him the ſame,) but has hitherto refuſed, and ſtill doth refuſe to pay the ſame to the ſaid *Mark*, to the Damage of the ſaid *Mark* of ſixty Pounds; and thereupon he brings Suit, *&c.* *Breach.*

Pledges, *&c.*

Eaſter

Eaſter *Term in the Eighth Year of the Reign of King* George *the Second.*

Ventris.

By an Attorney. Indeb. Aſſ. *for Buſineſs done, Money laid out, and for Fees.*

Middleſex, to wit. JOHN *Duncombe* Gentleman, one of the Attornies of the Court of the Lord the King, before the King himſelf being, according to the Liberty and Privilege of ſuch Attornies of the ſame Court, from the Time whereof the Memory of Man is not to the contrary, uſed and approved of in the ſame, preſent here in Court in his proper Perſon complains of *Samuel Anderſon* and *Henry Child* in the Cuſtody of the Marſhal of the *Marſhalſea* of the Lord the King, before the King himſelf being, for that whereas the ſaid *Samuel* and *Henry*, on the firſt Day of *January* in the Year of our Lord one Thouſand ſeven Hundred and Thirty-four, at *Weſtminſter* in the County of *Middleſex*, were indebted to the ſaid *John* in fifty Pounds of lawful Money of *Great Britain*, for Work and Labour as an Attorney and Solicitor, before then done and performed by the ſaid *John*, upon the Retainer and at the ſpecial Inſtance and Requeſt of the ſaid *Samuel* and *Henry*, in and about the proſecuting, defending and ſoliciting of divers Cauſes, Suits and Buſineſſes, and for Money laid out, expended and paid by the ſaid *John* at the like Inſtance and Requeſt of

Upon Retainer.

of the ſaid *Samuel* and *Henry*, in and about the proſecuting, defending and ſoliciting of thoſe Cauſes, Suits and Buſineſſes, and for Money due to the ſaid *John* for his Fees due, and of Right payable to him in that Reſpect; and being ſo indebted, they the ſaid *Samuel* and *Henry*, in Conſideration thereof afterwards, *to wit*, on the ſame Day and Year at *Weſtminſter* aforeſaid, aſſumed upon themſelves, and then and there faithfully promiſed the ſaid *John*, that they the ſaid *Samuel* and *Henry* would pay to the ſaid *John* the ſaid Sum of Money when requeſted to pay the ſame: And whereas the ſaid *Samuel* and *Henry* afterwards, *to wit*, on the ſame Day and Year at *Weſtminſter* aforeſaid, in Conſideration that the ſaid *John*, upon their Retainer, and at their like Inſtance and Requeſt, had done and performed other Work and Labour as an Attorney and Solicitor in and about the proſecuting, defending and ſoliciting divers other Cauſes, Suits and Buſineſſes, and laid out, expended and paid other Money in and about the proſecuting, defending and ſoliciting of thoſe Cauſes, Suits and Buſineſſes, aſſumed upon themſelves, and then and there faithfully promiſed the ſaid *John*, that they the ſaid *Samuel* and *Henry* would pay to the ſaid *John* ſo much Money as he reaſonably deſerved to have, for his laſt mentioned Work and Labour, and ſo much Money as he had ſo laid out, expended and paid in and about the ſaid proſecuting, defending and ſoliciting the ſaid laſt

Quantum meruit *for Buſineſs done as an Attorney on Retainer, Money laid out, and for Fees.*

laſt mentioned Cauſes, Suits and Buſineſſes; and ſo much Money as was due to the ſaid *John* for his Fees due and of Right payable to him in that Reſpect, when the ſaid *Samuel* and *Henry* ſhould be thereunto requeſted: And the ſaid *John* avers, that he reaſonably deſerved to have of the ſaid *Samuel* and *Henry*, for his laſt mentioned Work and Labour, other fifty Pounds of like lawful Money; and that he had ſo laid out, expended and paid in and about the ſaid proſecuting, defending and ſoliciting the ſaid laſt mentioned Cauſes, Suits and Buſineſſes, thirty Pounds of like lawful Money; and that twenty Pounds of like lawful Money, were due to the ſaid *John* for his Fees due and of Right payable to him in that Reſpect, *to wit*, at *Weſtminſter* aforeſaid, whereof the ſaid *Samuel* and *Henry* then and there had Notice. And whereas alſo the aforeſaid *Samuel* and *Henry* afterwards, *to wit*, on the ſame Day and Year at *Weſtminſter* aforeſaid, were indebted to the ſaid *John* in eighteen Pounds of like lawful Money for the like Sum of Money by the ſame *John*, at the ſpecial Inſtance and Requeſt of the ſaid *Samuel* and *Henry*, before that Time expended, laid out, diſburſed and paid; and being ſo indebted, the ſame *Samuel* and *Henry* afterwards, *to wit*, the ſame Day and Year at *Weſtminſter* aforeſaid, in Conſideration thereof aſſumed upon themſelves, and to the ſame *John* then and there faithfully promiſed, That they the ſaid *Samuel* and *Henry*, the ſame eighteen Pounds to the ſame

Indeb. Aſſ. *for Money laid out and expended.*

ſame *John*, when they ſhould be thereto afterwards requeſted, would well and truly pay and content. Yet the ſaid *Samuel* and *Henry* in no wiſe regarding the ſaid ſeveral Promiſes and Aſſumptions made in Form aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *John* in this Reſpect, have not, nor either of them hath paid to the ſaid *John* the ſaid ſeveral Sums of Money, or any Part thereof, (although the ſaid *Samuel* and *Henry* afterwards, *to wit*, on the fifth Day of *January* in the ſame Year at *Weſtminſter* aforeſaid, were requeſted by the ſaid *John* to pay him the ſame) but have hitherto refuſed, and ſtill doth refuſe to pay the ſame to the ſaid *John*, to the Damage of the ſaid *John* of ſixty Pounds; and thereupon he brings Suit, and ſo forth. *Breach.*

Duncombe in Perſon.
——————— for *Anderſon* and *Child*.

Pledges to proſecute { *John Doe*, and *Richard Roe*.

Mid-

By an Attorney for the Moiety of Rent, &c. of Chambers in an Inn of Chancery *hired by Plaintiff at Defendant's Requeſt, and of which Defendant had joint Uſe with Plaintiff.*

Middleſex, to wit, *R. R.* Gentleman, one of the Attornies of the Court of our Sovereign Lord the King, before the King himſelf, according to the Liberty and Privilege for ſuch Attornies and other Miniſters of the ſame Court, from the Time whereof the Memory of Man is not to the contrary, uſed and approved of in the ſame, preſent here in Court in his proper Perſon, complains of *Thomas Tuder*, being in the Cuſtody of the Marſhal of the *Marſhalſea* of our ſaid Lord the King, before the King himſelf; for that whereas the ſaid *Thomas* on the Day of in the Year of our Lord one Thouſand ſeven Hundred and at *Weſtminſter* in the ſaid County of *Middleſex*, in Conſideration that the ſaid *Robert*, at the ſpecial Inſtance and Requeſt of the ſaid *Thomas*, would hire a Chamber ready furniſhed in any Inn of Court or of *Chancery*, and find and provide a Perſon to clean and take Care of the ſame, and alſo would find and provide Fuel and Candles, and other Things neceſſary and convenient in and about the Occupation of the ſaid Chamber, and would permit and give Leave to the ſaid *Thomas*, to occupy and make uſe of the ſaid Chamber, Fuel, Candles and other Neceſſaries and Conveniences, jointly with the ſaid *Robert*, ſo long as both the ſaid Parties ſhould pleaſe, aſſumed upon himſelf, and then and there faithfully promiſed

miſed the ſaid *Robert*, that he the ſaid *Thomas* would repay to the ſaid *Robert* a Moiety of the Expences which he ſhould be put to in and about the Premiſſes; and the ſaid *Robert* in fact ſays, That he the ſaid *Robert* giving Credit to the ſaid Promiſe and Aſſumption of the ſaid *Thomas*, made in Form aforeſaid, afterwards, *to wit*, on the Day of in the ſame Year, at the Inſtance of the ſaid *Thomas*, hired a Chamber ready furniſhed, in a certain Inn of *Chancery*, called Inn in the ſaid County of *Middleſex*, for the Term of three Years, to commence from the Day of of which the ſaid *Thomas* afterwards, *to wit*, on the ſame Day and Year at *Weſtminſter* aforeſaid, had Notice; and the ſaid *Robert* then and there gave Licence to the ſaid *Thomas* to occupy and make uſe of the ſaid Chamber, and all the ſaid Fuel, Candles, and other Neceſſaries and Conveniences to be found and provided therein by the ſaid *Robert* as aforeſaid, jointly with the ſaid *Robert*, for and during that Term; and although the ſaid *Robert* continued in the Occupation of that Chamber for all the ſaid Term, and during all that Time found and provided a Perſon to clean and take Care of the ſaid Chamber, and alſo Fuel, Candles, and all other Things neceſſary and convenient in and about the Occupation of the ſaid Chamber; and the ſaid *Thomas* for and during all thoſe three Years freely and without any Hindrance or Denial

nial of the ſaid *Robert*, might have made Uſe of the ſaid Chamber, Fuel, Candles, and other Neceſſaries and Conveniences aforeſaid, jointly with the ſaid *Robert*, and did accordingly make Uſe of the ſame for Part of that Time; and although the ſaid *Robert* did expend and pay for the Hire of the ſaid Chamber, cleaning, and taking Care of the ſame as aforeſaid, Fuel, Candles, and other Neceſſaries and Conveniences uſed therein for thoſe three Years, ſeveral Sums of Money, in the whole amounting to of lawful Money of *Great Britain*, of which the ſaid *Thomas* afterwards, *to wit*, on the Day of in the Year of our Lord one Thouſand ſeven Hundred and at *Weſtminſter* aforeſaid, had Notice; and the ſaid *Thomas* was then and there requeſted by the ſaid *Robert* to re-pay to the ſaid *Robert*, a Moiety or half Part of the ſaid Sum of ſo expended and paid by the ſaid *Robert* as aforeſaid, according to the Form and Effect of the ſaid Promiſe and Aſſumption of the ſaid *Thomas*. Nevertheleſs, the ſaid *Thomas* in no wiſe regarding his ſaid Promiſe and Aſſumption made in Form aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive the ſaid *Robert* in this Particular, has not yet re-paid to the ſaid *Robert* a Moiety or half Part of the ſaid ſo expended and paid by the ſaid *Robert* as aforeſaid, or any Part thereof, but has hitherto wholly refuſed,

Breach.

and ſtill refuſes to pay him the ſame, or any Part thereof: And whereas the ſaid *Thomas* afterwards, *to wit*, the Day and Year laſt mentioned at *Weſtminſter* aforeſaid, was indebted to the ſaid *Robert* in other of lawful Money of *Great Britain*, for other Lodging, Fuel, and Candles, before that Time found and provided by the ſaid *Robert* for the ſaid *Thomas*, at the ſpecial Inſtance and Requeſt of the ſaid *Thomas*; and the ſaid *Thomas* being ſo indebted, in Conſideration thereof afterwards, *to wit*, on the ſame Day and Year at *Weſtminſter* aforeſaid, aſſumed upon himſelf, and then and there faithfully promiſed the ſaid *Robert*, that he the ſaid *Thomas* would pay to the ſaid *Robert* the laſt mentioned Sum of Money when the ſaid *Thomas* ſhould be requeſted to pay the ſame: And whereas the ſaid *Thomas* afterwards, *to wit*, at the ſame Day and Year at *Weſtminſter* aforeſaid, in Conſideration that the ſaid *Robert*, at the like Inſtance and Requeſt of the ſaid *Thomas*, had before that Time found and provided for the ſaid *Thomas* other Chambers, Lodging, Fuel and Candles, aſſumed upon himſelf, and then and there faithfully promiſed the ſaid *Robert*, that he the ſaid *Thomas* would pay to the ſaid *Robert* ſo much Money as he therefore reaſonably deſerved to have, when the ſaid *Thomas* ſhould be requeſted to pay the ſame; and the ſaid *Robert* in Fact ſays, That he reaſonably deſerved to have for the ſame of the ſaid *Thomas*, other of like

Indeb. Aſſumpſit *for Lodging, &c.*

Quantum meruit *thereon.*

lawful Money, *to wit*, at *Weſtminſter* aforeſaid, of which the ſaid *Thomas* had then and there Notice: And whereas the ſaid *Thomas* afterwards, *to wit*, on the ſame Day and Year at *Weſtminſter* aforeſaid, was indebted to the ſaid *Robert* in other of like lawful Money, for Money before that Time laid out, expended, and paid by the ſaid *Robert*, for the Uſe of the ſaid *Thomas*, and at his ſpecial Inſtance and Requeſt; and the ſaid *Thomas* being ſo indebted, in Conſideration thereof, afterwards, *to wit*, on the ſame Day and Year at *Weſtminſter* aforeſaid, aſſumed upon himſelf, and then and there faithfully promiſed the ſaid *Robert*, that he the ſaid *Thomas* would pay to the ſaid *Robert* the laſt mentioned Sum of Money, when the ſaid *Thomas* ſhould be requeſted to pay the ſame. Nevertheleſs, the ſaid *Thomas* in no wiſe regarding his three laſt mentioned Promiſes and Aſſumptions made in Form aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *Robert* alſo in this Reſpect, has not yet paid to the ſaid *Robert* the ſaid ſeveral Sums of Money mentioned in thoſe Promiſes and Aſſumptions, or any Part thereof (although the ſaid *Thomas* afterwards, that is to ſay, on the Day of in the ſame Year at *Weſtminſter* aforeſaid, was requeſted by the ſaid *Robert* to pay him the ſame) but has hitherto wholly refuſed, and ſtill refuſes to pay thoſe ſeveral Sums to the ſaid *Robert*, to

Indeb. Aſſumpſit *for Money laid out for Defendant's Uſe.*

Breach.

to the Damage of the ſaid *Robert* of and thereupon he brings Suit, *&c.*

Pledges to proſecute { *John Doe* and *Richard Roe.*

Trinity *Term in the Tenth and Eleventh Years of the Reign of King* George *the Second.*

Middleſex, to wit. BE it remembered, that on *Friday* next after the Morrow of the Holy *Trinity* in this ſame Term, before our Sovereign Lord the King at *Weſtminſter*, came *Henry George Rounds* by *Robert Richardſon* his Attorney, and brings here in the Court of our ſaid Lord the King at *Weſtminſter*, his certain Bill againſt *Benjamin Parren*, *James Bunyan* and *Charles Pynes*, in the Cuſtody of the Marſhal, and ſo forth, in a Plea of Treſpaſs upon the Caſe; and there are Pledges for the Proſecution, *to wit*, *John Doe* and *Richard Roe*, which ſaid Bill follows in theſe Words: That is to ſay, *Middleſex*, to wit, *Henry George Rounds* complains of *Benjamin Parren*, *James Bunyan*, and *Charles Pynes*, being in the Cuſtody of the Marſhal of the *Marſhalſea* of the ſaid Lord the King, before the King himſelf, of that, that is to ſay, That they the ſaid *Benjamin Parren*, *James Bunyan*, and *Charles Pynes*, on the Twenty-firſt Day of *May*

Memorandum *of ſame Term.*

Declaration for breaking and entring Plaintiff's Houſe.

in the Tenth Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, and ſo forth, with Force and Arms, and ſo forth, the Houſe of the ſaid *Henry George Rounds* in the Pariſh of St. *Leonard Shoreditch* in the County of *Middleſex* they broke and entred: And alſo for that they, the ſaid *Benjamin Parren*, *James Bunyan* and *Charles Pynes*, afterwards, that is to ſay, on the ſame Twenty-firſt Day of *May* in the Tenth Year aforeſaid, with Force and Arms, and ſo forth, broke and entred another Houſe of the ſaid *Henry George Rounds* in the Pariſh aforeſaid in the County aforeſaid, and him the ſaid *Henry George Rounds* in the quiet Uſe and Occupation of the ſaid Houſe laſt mentioned then and there diſturbed and hindred: And alſo, for that they the ſaid *Benjamin Parren*, *James Bunyan* and *Charles Pynes* afterwards, that is to ſay, on the ſame twenty-firſt Day of *May* in the Tenth Year aforeſaid, with Force and Arms, another Houſe of the ſaid *Henry George Rounds* in the Pariſh of St. *Leonard Shoreditch* aforeſaid in the County aforeſaid broke and entred, and the Goods and Chattels of him the ſaid *Henry George Rounds* in the ſaid Houſe then being (that is to ſay) A three Pint ſilver Tankard, a ſilver pint Mug, two ſilver Salts, two large ſilver Spoons, ſeven ſilver Tea-ſpoons, a ſilver Strainer, two large Stoves, two Fire-Shovels, two Pokers, two Pair of Tongs and two Fenders, one large Grate, a Fire-ſhovel, a Poker,

For breaking and entring Plaintiff's Houſe, and diſturbing him in the Poſſeſſion thereof.

For breaking and entring Plaintiff's Houſe, and carrying away his Goods.

Poker, a Pair of Tongs and Fender; three Cane Chairs, ſix black Cane Chairs japan'd with Gold, ſix matted Chairs, a Chamber Table, a large Coffee Table, a Tea Table, a large oval Wainſcot Table, three other Tables, a Wainſcot Cheſt of Drawers, a large Cabinet black japan'd with Gold, a large Corner Cupboard black japan'd with Gold, five large Pictures, four ſmall Pictures, four large Pictures painted on Glaſs, with gold Frames, a large Chimney Picture, a large Pier Glaſs with a black Frame japan'd with Gold, a large Chimney Glaſs, a Pair of glaſs Sconces with glaſs Arms, a Pair of braſs Arms, a looking Glaſs, a Pair of Window Curtains of red and white Camlet, two Pair of Printed Linen Window Curtains, two Feather-Beds, two Bolſters and two Pillows, five Blankets, two Quilts, one Rug, a Bedſtead with Curtains and Vallance of red and white Camlet, one other Bedſtead, one Eight-day Clock with an inlaid Caſe, an iron Cheſt, three Pair of braſs Candleſticks, a braſs Peſtle and Mortar, a braſs Candle-box, a braſs hand Candleſtick, a braſs Slice, a braſs Ladle, ſeven pewter Diſhes, two dozen of pewter Plates, a braſs Warming-pan, a large Pottage Pot, a large Sauce-pan, three ſmall Sauce-pans, a large Copper Stew-pan, a Frying-pan, a Copper Tea-kettle, a Grid-iron, a Pair of Bellows, of the Value of one hundred Pounds of lawful Money of *Great Britain*, then and there took and carried away, and other Enormities to him

then and there committed, contrary to the Peace of our ſaid Lord the now King, and to the Damage of the ſaid *Henry George Rounds* of two hundred and forty Pounds; and therefore he bringeth Suit.

Not guilty as to part, juſtify under Plaintiff's Wife as to Reſidue.

And the ſaid *Benjamin*, *James* and *Charles*, by *John Meale* their Attorney, come and defend the Force and Injury, when, &c. And as to the Force and Arms, and Breaking the Houſes of the ſaid *Henry George*, and diſturbing and hindering him in the quiet Uſe and Occupation of the ſaid Houſes in the ſaid Declaration alledged, and taking and carrying away from thence all or any Part of the ſeveral Goods and Chattels in the ſaid Declaration mentioned, except as herein after is ſpecified; and whatſoever is againſt the Peace of the ſaid now Lord the King, and alſo as to all the ſaid Treſpaſſes ſuppoſed to be committed in the Houſes aforeſaid, beſides entring into the Houſe of the ſaid *Henry George* in the third Declaration mentioned, and taking and carrying away the ſeveral Goods and Chattels, being Part of the ſaid Goods and Chattels in the ſaid Declaration mentioned and herein after ſpecified, they ſay that they or either of them are not guilty, as the ſaid *Henry George* above complains againſt them; and of this they put themſelves upon the Country; and the ſaid *Henry George* doth likewiſe the ſame. And as to the entring of the ſaid Houſe in the ſaid third Declaration mentioned, and taking

Iſſue.

king and carrying away the ſeveral Goods and Chattels, being Part of the ſaid Goods and Chattels in the ſaid Declaration ſpecified and herein after mentioned, that is to ſay, two Stoves, two Fire-ſhovels, two Pokers, two Pair of Tongs, and two Fenders, ſix black Cane Chairs, three Tables, a Wainſcot Cheſt of Drawers, a Cabinet, a Corner Cupboard, a Pier Glaſs, a Chimney Glaſs, one Feather Bed, one Blanket, a Clock and Caſe, an Iron Cheſt, a braſs Warming-pan, and a Pottage Pot, they ſay that the ſaid *Henry George* ought not to have or maintain his ſaid Action againſt them for the ſame, becauſe they ſay, that before the ſeveral Times in which the ſaid ſeveral Treſpaſſes were ſuppoſed to be committed, that is to ſay, on the ſaid Twenty-firſt Day of *May* in the Tenth Year aforeſaid, at the Pariſh aforeſaid in the County aforeſaid, the ſaid *Henry George* gave Licence to *Elizabeth* his Wife, to take and carry away the ſaid Goods and Chattels herein before mentioned, being Part of the ſaid Goods and Chattels in the ſaid Declaration ſpecified, from the ſaid Houſe, and borrow Money thereon for the Uſe of the ſaid *Henry George* by pledging of the ſame; and they ſay, that by Virtue of ſuch Licence, ſhe the ſaid *Elizabeth* on the Day and Year aforeſaid, at the Pariſh aforeſaid in the County aforeſaid, before the Times the ſaid Treſpaſſes were ſuppoſed to be committed, hired the ſaid *Benjamin*, *James* and *Charles* to enter the ſaid Houſe, and take and carry

away the ſaid ſeveral Goods and Chattels herein before mentioned, being Part as aforeſaid, with Intent and Purpoſe by pledging of the ſame to borrow Money for the Uſe of the ſaid *Henry George*; and that they afterwards, that is to ſay, on the Day and Year aforeſaid, at the Pariſh aforeſaid in the County aforeſaid, did by Virtue of ſuch Licence enter the ſaid Houſe of the ſaid *Henry George*, and take and carry away the ſaid ſeveral Goods and Chattels herein before mentioned, being Part as aforeſaid, in Order to pledge the ſame for the Intent and Purpoſe aforeſaid, as it was lawful for them to do; and thereupon the ſaid *Elizabeth* afterwards, that is to ſay, on the Day and Year aforeſaid at the Pariſh aforeſaid in the County aforeſaid did pledge the ſame, and then and there had and received to and for the Uſe of the ſaid *Henry George* her Huſband, the Money for which the ſaid ſeveral Goods and Chattels herein before mentioned, being Part as aforeſaid, were ſo pledged, which are the ſame Entring of the ſaid Houſe, and Taking and Carrying away the ſaid ſeveral Goods and Chattels, being Part of the ſaid Goods and Chattels in the ſaid Declaration ſpecified and herein before mentioned, and for which the ſaid *Henry George* by his ſaid Declaration complains. And this they are ready to verify; and therefore pray Judgment whether the ſaid *Henry George* ought to have or maintain his ſaid Action againſt them for the ſame.

Thomas Burdus.

And

And the ſaid *Henry George Rounds*, as to the aforeſaid Plea of the ſaid *Benjamin Parren*, *James Bunyan* and *Charles Pynes*, as to the Entring into the ſaid Houſe of the ſaid *Henry George* in the ſaid third Declaration mentioned, and Taking and Carrying away the ſeveral Goods and Chattels, being Part of the ſaid Goods and Chattels in the ſaid Declaration ſpecified, and in the ſaid Plea particularly mentioned by them above pleaded in Bar, ſaith, That he by any Thing in the ſaid Plea above alledged ought not to be barred from having and maintaining his ſaid Action therefore againſt them, becauſe he ſaith, That the ſaid *Benjamin James* and *Charles*, at the Time mentioned in the ſaid Declaration at the Pariſh aforeſaid, with Force and Arms, of their own Wrong, without ſuch Cauſe as is by them above alledged in their ſaid Plea, entered into the ſaid Houſe of the ſaid *Henry George* in the ſaid third Declaration mentioned, and took and carried away the ſeveral Goods and Chattels, being Part of the ſaid Goods and Chattels in the ſaid Declaration ſpecified, and in the ſaid Plea particularly mentioned, in Manner and Form as the ſaid *Henry George Rounds* hath above thereof declared againſt them; and this he prays may be enquired of by the Country, *&c.*

Replication. de Injuria ſua Propria.

Thomas Deniſon.

And

Iſſue. Venire awarded to try both Iſſues.

And the ſaid *Benjamin*, *James* and *Charles* do ſo likewiſe: Therefore as well to try this Iſſue as the ſaid other Iſſue joined between the Parties, let the Jurors come before our Lord the King at *Weſtminſter*, on next after who are in no wiſe related either to the ſaid *Henry George*, or to the ſaid *Benjamin*, *James* and *Charles*, to make a certain Jury of the Country between the ſaid Parties of the Plea aforeſaid, to recognize upon their Oaths the full Truth of and concerning the Premiſſes, becauſe as well the ſaid *Benjamin James* and *Charles*, as the ſaid *Henry George*, between whom the Matter in Variance is, have put themſelves upon that Jury. The ſame Day is given to the Parties aforeſaid at the ſame Place.

Indorſee of a Promiſſory Note againſt the Drawer.

London. L. A. complains of *T. L.* in the Cuſtody of the Marſhal of the *Marſhalſea* of our Lord the King, before the King himſelf, for that whereas the ſaid *T.* after the firſt Day of *May* in the Year of our Lord one Thouſand ſeven Hundred and five, *to wit*, on the Thirtieth Day of *July* 30 July 1733 in the Year of our Lord one Thouſand ſeven Hundred and Thirty-three, at *London* aforeſaid, *to wit*, in the Pariſh of St. *Mary le Bow* in the Ward of *Cheap*, made a certain Note in Writing with his own Hand ſubſcribed thereto, bearing Date the ſame Day and Year laſt mentioned, and then and there delivered the ſaid Note to one *J. W.*

vid. Cliffs Entries 929 for a Decl. at ye Suit of Partners Endorſees

J. W. by which ſaid Note the aforeſaid *T.* promiſed to pay the ſaid *J. W.* by the Name of Mr. *J. W.* or his Order, the Sum of fifty Pounds for Value received; and the ſaid *J. W.* afterwards, and before the Payment of the ſaid fifty Pounds, or any Part thereof, *to wit*, the Thirtieth Day of *Auguſt* in 30 *Aug.* the Year laſt mentioned, at *London* aforeſaid in the Pariſh and Ward aforeſaid, by a certain Indorſement in Writing then and there made on the ſaid Note, and then and there ſubſcribed with the proper Hand of the ſaid *J. W.* aſſigned the aforeſaid Note to the ſaid *L. A.* and by the ſame Indorſement ordered and appointed the aforeſaid *T. L.* to pay to the ſaid *L. A.* the ſaid Sum of fifty Pounds in the aforeſaid Note ſpecified, according to the Form and Effect of the ſame Note, whereof the ſaid *T. L.* afterwards, *to wit*, the Day and Year laſt aboveſaid, at *London* aforeſaid in the Pariſh and Ward aforeſaid, had Notice; by Reaſon whereof, and alſo by Force of the Statute in that Caſe made and provided, the ſaid *T. L.* became chargeable and liable to pay to the aforeſaid *L. A.* the ſame Sum of fifty Pounds mentioned in the aforeſaid Note, according to the Form and Effect of the ſaid Note and Indorſement; and the ſaid *T. L.* being ſo chargeable, in Conſideration thereof, afterwards, *to wit*, the Day and Year laſt aboveſaid, at *London* aforeſaid in the Pariſh and Ward aforeſaid undertook, and to the ſaid *L. A.* then and there faithfully promiſed, that he the ſaid *T. L.* would well and faithfully

fully pay and content to the ſaid *L. A.* the aforeſaid Sum of fifty Pounds in the ſaid Note mentioned, according to the Tenor and Effect of the ſaid Note and Indorſement. Nevertheleſs, the ſaid *T. L.* no ways regarding his ſaid Promiſe and Undertaking made in Form aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *L. A.* in this Particular, hath not paid him the ſaid 50 *l.* or any Part thereof, (although often required, *&c.*) but hath hitherto refuſed, and ſtill doth refuſe to pay him the ſame, to the Damage of the ſaid *L. A.* of eighty Pounds; and thereupon he brings Suit, *&c.*

Breach.

Pledges, *&c.* { *John Doe* and *Richard Roe.*

Pleas

Pleas before our Lord the King at Weſtminſter *of* Trinity *Term in the Year of the Reign of our Sovereign Lord* George *the Second, now King of* Great Britain, *&c.*

Cambridge, to wit. MEmorandum that heretofore, *to wit*, in *Eaſter* Term in the Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, *&c.* before our Lord the King at *Weſtminſter* came *Henry Harriſon* by his Attorney, and brought into the Court of our ſaid Lord the King then there, his Bill againſt *Adlard Cage* Gentleman and *Elizabeth* his Wife, in the Cuſtody of the Marſhal of the *Marſhalſea* of our ſaid Lord the King, before the King himſelf, on a Plea of Treſpaſs on the Caſe; and there are Pledges of proſecuting, *to wit*, *John Doe* and *Richard Roe*; which ſaid Bill follows in theſe Words: *to wit*, Cambridge, *to wit*, *Henry Harriſon*, Gentleman, complains of *Adlard Cage* Gentleman and *Elizabeth* his Wife, in the Cuſtody of the Marſhal of the *Marſhalſea* of our Lord the King, before the King himſelf, for that *to wit*, that whereas the ſaid *Elizabeth* while ſhe was ſole, *to wit*, on the firſt Day of *April* in the Year

Memorandum *of a Declaration of a precedent Term.*

Caſe againſt Huſband and Wife on Promiſe of Marriage by Wife while Sole.

Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, &c. at *Burrough Green* in the County aforeſaid, (in Conſideration that the ſaid *Henry* then and there being a ſingle Man and unmarried, at the ſpecial Inſtance and Requeſt of the ſaid *Elizabeth*, had then and there agreed with the ſaid *Elizabeth*, and had undertook and faithfully promiſed the ſaid *Elizabeth*, that he the ſaid *Henry* would marry her the ſaid *Elizabeth*) undertook, and then and there faithfully promiſed the ſaid *Henry*, that ſhe the ſaid *Elizabeth* would marry the ſaid *Henry*; and although the ſaid *Henry*, confiding in the ſaid Promiſe and Undertaking of the ſaid *Elizabeth*, hath utterly refuſed to contract Matrimony with any other Woman, and ſtill is a ſingle Man and unmarried, and always from the Time of making the ſaid Promiſe and Undertaking (while the ſaid *Elizabeth* was Sole) was ready, and often offered lawfully to marry the ſaid *Elizabeth*, *to wit*, at *Borough Green* aforeſaid in the County aforeſaid; yet the ſaid *Elizabeth* while ſhe was Sole no ways regarding her ſaid Promiſe and Undertaking, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *Henry* in this Particular, did not marry the ſaid *Henry* (although after the ſaid Promiſe and Undertaking aforeſaid was made, *to wit*, on the Nine and Twentieth Day of *April* in the Year aforeſaid, and often before and after, at *Borough Green*

Breach.

Requeſt and Refuſal.

Green aforeſaid in the County aforeſaid, the ſaid *Elizabeth* had been thereunto required by the ſaid *Henry*) but entirely refuſed to marry him; and afterwards, *to wit*, on the firſt Day of *October* in the Year aforeſaid, at *Borough Green* aforeſaid in the County aforeſaid, married the ſaid *Adlard* contrary to the ſaid Promiſe and Undertaking of the ſaid *Elizabeth* aforeſaid. *And married Defendant.*

And alſo, whereas the ſaid *Elizabeth* (while ſhe was Sole) *to wit*, on the firſt Day of *May* in the Year aforeſaid, was indebted to the ſaid *Henry* in three hundred Pounds lawful Money of *Great Britain*, for Money by the ſaid *Henry*, at the ſpecial Inſtance and Requeſt of the ſaid *Elizabeth*, and for the ſaid *Elizabeth* (while ſhe was Sole) before that Time paid and expended, and for Money by the ſaid *Elizabeth* while ſhe was Sole before that Time borrowed and received of the ſaid *Henry*; and being ſo indebted the ſaid *Elizabeth*, (while ſhe was Sole) the ſame Day and Year laſt mentioned at *Borough Green* aforeſaid in the County aforeſaid, in Conſideration thereof undertook, and then and there faithfully promiſed the ſaid *Henry*, that ſhe the ſaid *Elizabeth*, when ſhe ſhould be thereunto required, would well and truly pay the ſaid three hundred Pounds to the ſaid *Henry*: Yet the ſaid *Elizabeth* (while ſhe was ſole), and the ſaid *Adlard* and *Elizabeth* after they were married, no Ways regarding the laſt mentioned Promiſe and Undertaking of the ſaid *Elizabeth* made in

Ind. Aſſ. *for Money laid out for, and lent to her while Sole.*

Breach.

Form

Form aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *Henry* in this Particular, have not, nor has either of them (although often required) paid the ſaid three hundred Pounds, or any Penny thereof, to the ſaid *Henry*, but have entirely refuſed, and ſtill do refuſe to pay him the ſaid Sum of Money, or any Ways content him for the ſame; wherefore the ſaid *Henry* ſays that he is injured, and has Damages to the Value of three thouſand Pounds; and thereupon he brings Suit, *&c.*

Imparlance. And now at this Day, *to wit*, *Friday* next after the Morrow of the Holy *Trinity* in this ſame Term, unto which Day the ſaid *Adlard* and *Elizabeth* had Leave to imparle to the ſaid Bill, and then to anſwer, *&c.* before our Lord the King at *Weſtminſter* came as well the ſaid *Henry* by his Attorney aforeſaid, as the ſaid *Adlard* and *Elizabeth* by their Attorney; and the ſaid *Adlard* and *Elizabeth* defend the Force and Injury when, *&c.* and ſay that the ſaid *Elizabeth* did not undertake in Manner and Form as the ſaid *Henry* above complains againſt her; and of this they put themſelves upon their Country; and the ſaid *Henry* likewiſe, *&c.* Therefore let a Jury come thereupon before our Lord the King at *Weſtminſter*, on *Wedneſday* next after three Weeks from the Day of the Holy *Trinity*, and who are of no wiſe of Kin either to the ſaid *Henry Harriſon*, or to the ſaid *Adlard* and *Elizabeth*, to take Cognizance

Non Aſſumpſit.

Iſſue.
Venire *awarded.*

nizance upon their Oaths of the whole Truth of the Premiſſes, becauſe as well the ſaid *Adlard* and *Elizabeth*, as the ſaid *Henry*, have put themſelves upon that Jury. The ſame Day is given to the Parties aforeſaid at the ſame Place. Afterwards the Proceſs is thereupon continued between the Parties aforeſaid of the Plea aforeſaid, by the Jury between them, being reſpited before our Lord the King at *Weſtminſter*, until *Monday* next after three Weeks from the Day of St. *Michael* then next following, unleſs the Juſtices of our Lord the King aſſigned to hold the Aſſizes in the County aforeſaid ſhall firſt come on the Eleventh Day of *Auguſt*, at the Caſtle of *Cambridge* in the County aforeſaid, according to the Form of the Statute in ſuch Caſe made and provided for Default of the Jurors, becauſe none of them did appear. At which Day before our Lord the King at *Weſtminſter* the ſaid *Henry* comes by his Attorney aforeſaid, and the ſaid Juſtices, before whom the ſaid Iſſue was tried, ſent hither their ſaid Records had in theſe Words: Afterwards, at the Day and Place within contained, before Knight, Chief Baron of the *Exchequer* of our Lord the King, and Gentleman, for this Turn aſſociated to the ſaid and Sir Knight, one of the Juſtices of our ſaid Lord the King, aſſigned to hold Pleas before the King himſelf, Juſtice of our ſaid Lord the King, aſſigned to hold the Aſſizes Poſtea.

in the ſaid County of *Cambridge* by Force of the Statute, and ſo forth. The Preſence of the ſaid not being expected, by Virtue of the Writ of our Lord the King of *&c.* came the within named *Henry Harriſon* by his Attorney within named; and the within named *Adlard Cage* and *Elizabeth* his Wife, although ſolemnly required came not, but made Default: Therefore let the Jurors of the Jury within mentioned be taken againſt them by Default; upon which the Jurors of that Jury being Summoned alſo came, who to ſay the Truth of the within Contents being choſen, tried and ſworn, ſay upon their Oaths, That the ſaid *Elizabeth* undertook in Manner and Form as the ſaid *Henry* within complains againſt the ſaid *Adlard* and *Elizabeth*, and aſſeſs the Damages of the ſaid *Henry*, by Occaſion of the not performing the Promiſes and Undertakings within ſpecified, over and above his Coſts and Charges by him about his Suit in this Behalf expended, to four hundred Pounds, and for thoſe Coſts and Charges to forty Shillings. Therefore it is conſidered, That the ſaid *Henry Harriſon* recover againſt the aforeſaid *Adlard Cage* and *Elizabeth* his Wife, his Damages aforeſaid by the ſaid Jury in Form aforeſaid aſſeſſed; and alſo ſixteen Pounds for his ſaid Coſts and Charges by the Court of our Lord the King now here adjudged of Increaſe to the ſaid *Henry* by his Aſſent, which Damages amount in the whole to four hundred and eighteen Pounds; and the

Verdict for Plaintiff.

Judgment for Plaintiff.

Incrementum

the ſaid *Adlard* and *Elizabeth* in Mercy, *&c.* Afterwards, *to wit*, *Saturday* the ſix and twentieth Day of *November* in the Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, *&c.* a Tranſcript of the Record and Proceedings aforeſaid between the Parties aforeſaid of the Plea aforeſaid, with all Things concerning the ſame, by Pretext of a certain Writ of our Lord the King, for correcting Errors proſecuted by the ſaid *Adlard* and *Elizabeth* on the Premiſſes, by the Court of our Lord the King here, before the King himſelf, was tranſmitted before the Juſtices of our ſaid Lord the King of the Common Bench, and Barons of the *Exchequer* of our ſaid Lord the King, of the Degree of the Coif in the *Exchequer* Chamber, according to the Form of the Statute made in the Parliament of the Lady *Elizabeth*, late Queen of *England*, *&c.* held at *Weſtminſter* on the 23d Day of *November* in the Twenty-ſeventh Year of her Reign; and the ſaid *Adlard* and *Elizabeth* appearing in the ſaid Court of *Exchequer* Chamber aſſigned certain Matters for Error in the ſaid Record and Proceſs for reverſing the ſaid Judgment; to which the ſaid *Henry* alſo, appearing in the ſaid Court of *Exchequer* Chamber, pleaded that neither in the ſaid Record and Proceſs, nor in giving the ſaid Judgment, was in any Thing erroneous; and afterwards, *to wit*, on *Tueſday* the Seven and Twentieth Day of *June* in the Year of the

Writ of Error in the Exchequer *Chamber.*

Errors aſſigned.

In nullo eſt Erratum *pleaded.*

Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, *&c.* as well the Record and Proceedings aforeſaid, and the Judgment thereupon given, as alſo the Cauſes aforeſaid by the ſaid *Adlard* and *Elizabeth* aſſigned and alledged for Error, being by the ſaid Court of *Exchequer* Chamber diligently examined and fully underſtood, it ſeemed to the ſaid Court of *Exchequer* Chamber, that the ſaid Judgment was in no wiſe vitious or defective, and that the ſaid Record was not in any Thing erroneous: Therefore it was then and there conſidered by the ſaid Court of *Exchequer* Chamber, That the ſaid Judgment be in all Things affirmed, and do ſtand in its full Strength and Effect, (the ſaid Cauſes and Matters aſſigned and alledged for Errors by the ſaid *Adlard* and *Elizabeth* in any Thing notwithſtanding); and it was further then and there conſidered by the ſaid Court, that the ſaid *Henry* recover againſt the ſaid *Adlard* and *Elizabeth* ten Pounds and ten Shillings, by the Court there adjudged to the ſaid *Henry* by his Aſſent, according to the Form of the Statute in that Caſe made and provided, for his Damages, Coſts and Charges which he hath ſuſtained by Occaſion of the Delay of the Execution of the ſaid Judgment, by Pretext of proſecuting the ſaid Writ of Error; and thereupon the ſaid Record, and alſo the ſaid Proceedings of the ſaid Juſtices of the ſaid Common Bench aforeſaid, and the ſaid Barons of the ſaid *Exchequer*, before them had in the Premiſſes by the

Judgment affirmed.

Remittance of the Record.

Entry of Satisfaction on ye Record of a Judgment in Debt

(After the Judgment Go on thus.) "Afterwards (to wit) on Monday next after . . . . . in the 16 Year of the Reign of our Sovereign Lord Geo: the Second now King of Great Britain &c. before our said Lord ye King at Westm? came the aforesd R. (plto) in his proper person and acknowledged himself to be Satisfyed by ye s? J: S. for his Debt & Damages aforesd? Therefore let the said J. be quit of the Debt and Damages aforesd? &c.

or thus from mark ✠. Supra. Came ye s? [plto] by J. S. his attorney & acknowledged to have had Restitution from ye s? [Deft] of all Sums of money wch he ye s? [plto] hath been deprived off by reason of ye s? Judgmt. Therefore to the s? [Deft] for ever acquitted of all such Sums of money &c.

If by Warrant of Attorney Say.

" Afterwards (to wit) on the 5. day of November in ye 16 Yr. of ye Reign of our Sovereign Lord Geo: the 2d. now King of Great Britain &c. ~~before the said King at Westm.~~ Came there in Court aforesd? A: H. [the Plto] by W: B. his Attorney by Speciall warrant to him in this behalf given and acknowledged that he is Satisfyed the debt and damages aforesd? . Therefore let the s? be [the Deft] be quit of the said Debt & Damages &c.

NB. it is said that if a Plto has rec? full Satisfaction and refuses to acknowledge Satisfaction on Record, He may be compelled to it by a Sci: Fa.

the ſaid Juſtices and Barons before our Lord the King whereſoever, and ſo forth, were then remitted according to the Form of the Statute, &c. and they now remain in the Court of our ſaid Lord the King here, before the King himſelf, &c. Afterwards, *to wit*, *Wedneſday* next after three Weeks from the Day of the Holy *Trinity* in the Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, &c. before our ſaid Lord the King at *Weſtminſter* came the ſaid *Henry Harriſon* by his Attorney aforeſaid, and acknowledged that he had been ſatisfied by the ſaid *Adlard* and *Elizabeth* for the Damages, Coſts and Charges aforeſaid: Therefore let the ſaid *Adlard* and *Elizabeth* be quit of the ſaid Damages, Coſts and Charges, &c. *Satisfaction acknowledged.* *Salk.* 24, 736.

Pleas before our Lord the King at Weſtminſter, *of* Hilary *Term in the Year of the Reign of our Sovereign Lord* George *the Second, now King of* Great Britain, &c.

Roll.

London, *to wit.* BE it remembered, that on *Friday* next after the Octave of St. *Hilary* in this ſame Term, before our Lord the King at *Weſtminſter* came *Robert* *Memorandum of the ſame Term.*

bert Richardſon Gentleman, and *Elizabeth* his Wife, by *Edward Lewis* their Attorney, and brought here into the Court of our ſaid Lord the King then there, their Bill againſt *John Sedgwick* and *Elizabeth* his Wife, and *Edmund Ducket* in the Cuſtody of the Marſhal of the *Marſhalſea* of our ſaid Lord the King, before the King himſelf, of a Plea of Treſpaſs on the Caſe; and there are Pledges of Proſecuting, *to wit*, *John Doe* and *Richard Roe*; which ſaid Bill follows in theſe Words: *to wit*, London, *to wit*, *Robert Richardſon* Gentleman, and *Elizabeth* his Wife, complain of *John Sedgwick* and *Elizabeth* his Wife, and *Edmund Ducket*, in the Cuſtody of the Marſhal of the *Marſhalſea* of our ſaid Lord the King, before the King himſelf, for that, *to wit*, that whereas, on the firſt Day of *January* in the Year of our Lord one Thouſand ſeven Hundred and Diſcourſe was had by and between the ſaid *Robert Richardſon* and *Elizabeth* his Wife, and the ſaid *John Sedgwick* and *Elizabeth* his Wife, and *Edmund Ducket*, of and concerning a certain Writing, bearing Date the Twentieth Day of *April* in the Year of our Lord one Thouſand ſeven Hundred and Fourteen, purporting to be the Deed of one *Thomas Penny*, otherwiſe *Penne*, by which ſaid Writing reciting, That *Robert Richardſon*, Gentleman, is and by one Bond or Obligation, was, and ſtood bound to the ſaid *Thomas* in the Penal Sum of one Thouſand Pounds, conditioned for him the ſaid *Robert Richardſon*'s Payment

Declaration on an Iſſue directed out of Chancery, *upon a Queſtion, Whether a Writing was the Deed of Defendants Teſtator.*

Payment of fifty Pounds or thereabouts to the ſaid *Thomas*, his Executors, Adminiſtrators and Aſſigns; and alſo for his the ſaid *Robert Richardſon*'s Conveying and Aſſuring to the ſaid *Thomas*, his Executors, Adminiſtrators and Aſſigns, ſeveral Meſſuages, Lands and Tenements in the ſaid Condition mentioned, for ſecuring the Payment of all and ſingular ſuch Sum and Sums of Money, as ſhould be due and owing to the ſaid *Thomas*, his Executors, Adminiſtrators and Aſſigns, upon the ſaid Bond, in Manner in the ſaid Condition ſpecified; and alſo conditioned for his the ſaid *Robert*'s Conveying and Aſſuring the ſaid Meſſuages, Lands and Tenements to the ſaid *Thomas*, his Executors, Adminiſtrators and Aſſigns in Truſt, and for ſecuring a Maintenance and Proviſion for his Niece the ſaid *Elizabeth Richardſon*, Wife of the ſaid *Robert Richardſon*, and the Iſſue of their two Bodies, in Manner in the ſaid Condition mentioned, as by the ſaid Writing Obligatory and the Condition thereof more fully appeared. The ſaid *Thomas* in Conſideration of the natural Love and Affection which he had for his Niece the ſaid *Elizabeth Richardſon*, and to the Intent that the ſaid Bond, and all Benefit and Advantage to be had thereby, might after the Deceaſe of the ſaid *Thomas* be and remain entirely and wholly to and for the Uſe and Benefit of the ſaid *Elizabeth*, and the Iſſue of her Body begotten by the ſaid *Robert*, did give and grant to the ſaid *Elizabeth Richardſon* all and every Sum and Sums of Money

ney as ſhould be due and owing to the ſaid *Thomas*, his Executors, Adminiſtrators and Aſſigns, at the Time of his Death, or at any Time afterwards, on the ſaid Bond, and all Benefit and Profit thereof, to and for her own ſeparate Uſe and Maintenance; and in Caſe ſhe the ſaid *Elizabeth* ſhould not be living at the Time of the Death of the ſaid *Thomas*, then he did give and grant all and every ſuch Sum and Sums of Money, as ſhould be due and owing to the ſaid *Thomas*, his Executors, Adminiſtrators and Aſſigns, upon the ſaid Bond, at the Time of his Death, or at any Time afterwards, and all Benefit and Advantage thereof, to *Robert Richardſon*, Son of the ſaid *Robert* and *Elizabeth*, and to all and every the Child and Children begotten by the ſaid *Robert* the Father, upon the Body of the ſaid *Elizabeth*, who ſhould be then living, equally to be divided amongſt or between them, Share and Share alike. And laſtly, he the ſaid *Thomas* for himſelf, his Executors, Adminiſtrators and Aſſigns, did thereby renounce and quit-claim to all Benefit and Advantage to be had by or from the ſaid Bond after his Deceaſe, otherwiſe than for the Benefit of the ſaid *Elizabeth* and her Children, as in the ſaid Deed was above ſpecified; and upon the ſaid Diſcourſe, the ſaid *Robert Richardſon* the Father and *Elizabeth* his Wife then and there affirmed, that the ſaid Writing laſt above mentioned was the Deed of the ſaid *Thomas*, which Affirmation they the

ſaid

ſaid *John Sedgwick* and *Elizabeth* his Wife, and *Edmund Ducket* then and there denied; whereupon they the ſaid *Robert Richardſon* the Father, and *Elizabeth* his Wife, at the ſpecial Inſtance and Requeſt of the ſaid *John Sedgwick* and *Elizabeth* his Wife, and *Edmund Ducket*, then and there paid to the ſaid *John Sedgwick* and *Elizabeth* his Wife, and *Edmund Ducket*, ten Shillings, lawful Money of *Great Britain*, and in Conſideration thereof, they the ſaid *John Sedgwick* and *Elizabeth* his Wife, and *Edmund Ducket*, afterwards, *to wit*, on the ſame Day and Year at *London* aforeſaid undertook, and then and there faithfully promiſed the ſaid *Robert Richardſon* the Father and *Elizabeth* his Wife, to pay them twenty Shillings like lawful Money, if the ſaid Writing firſt above mentioned was the Deed of the ſaid *Thomas*: And the ſaid *Robert Richardſon* the Father, and *Elizabeth* his Wife aver, That the ſaid Writing firſt above mentioned was the Deed of the ſaid *Thomas*, as they the ſaid *Robert Richardſon* the Father and *Elizabeth* his Wife have above alledged; whereof the ſaid *John Sedgwick* and *Elizabeth* his Wife, and *Edmund Ducket*, afterwards, *to wit*, the ſame Day and Year at the ſame Place, had Notice; yet the ſaid *John Sedgwick* and *Elizabeth* his Wife, and *Edmund Ducket*, not regarding their ſaid Promiſe and Undertaking made in Form aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *Robert Richardſon*

chardſon the Father and *Elizabeth* his Wife in this Behalf have not, nor hath either of them yet paid to the ſaid *Robert Richardſon* the Father and *Elizabeth* his Wife, or to either of them, the ſaid Sum ſo as aforeſaid to be paid by the ſaid *John Sedgwick* and *Elizabeth* his Wife, and the ſaid *Edmund Ducket*, to the ſaid *Robert Richardſon* the Father and *Elizabeth* his Wife, (although they the ſaid *John Sedgwick* and *Elizabeth* his Wife, and *Edmund Ducket*, afterwards, *to wit*, on the Twentieth Day of *January* in the Year of our Lord One Thouſand ſeven Hundred and at *London* aforeſaid, were by them required to pay the ſame) but to pay them the ſame, have hitherto entirely refuſed, and ſtill do refuſe, to the Damage of the ſaid *Robert Richardſon* the Father and *Elizabeth* his Wife, of one hundred Shillings; and thereupon they bring Suit, *&c.*

Plea. And the ſaid *John Sedgwick* and *Elizabeth* his Wife, and *Edmumd Ducket*, by *William Cranſton* their Artorney, come and defend the Force and Injury, when, *&c.* and ſay, That the ſaid *Robert Richardſon* the Father and *Elizabeth* his Wife ought not to have or maintain their ſaid Action againſt them, becauſe they ſay, That true it is, that they the ſaid *John Sedgwick* and *Elizabeth* his Wife, and *Edmund Ducket*, undertook in Manner and Form as they the ſaid *Robert Richardſon* the Father and *Elizabeth* his Wife have thereupon above complained againſt them; but they the ſaid

ſaid *John Sedgwick* and *Elizabeth* his Wife, and *Edmund Ducket*, further ſay, That the ſaid Writing firſt above mentioned was not the Deed of the ſaid *Thomas*, as the ſaid *Robert Richardſon* the Father and *Elizabeth* his Wife have above affirmed; and of this they put themſelves upon the Country; and the ſaid *Robert Richardſon* the Father and *Elizabeth* thereupon likewiſe, *&c.* Therefore let a Jury come before our Lord the King at *Weſtminſter*, on *Monday* next after the Morrow of the Aſcenſion of our Lord, and who neither, *&c.* to take Cognizance, *&c.* becauſe as well, *&c.* The ſame Day is given to the Parties aforeſaid at the ſame Place. Afterwards, the Proceſs being continued between the Parties aforeſaid by the Jury between them being reſpited before our Lord the King at *Weſtminſter*, until *Friday* next after the Morrow of the Holy *Trinity* then next following, unleſs the King's Right Truſty and Well-beloved

his Chief Juſtice, aſſigned to hold Pleas Pleas before the King himſelf, ſhall firſt come on *Wedneſday* the Thirteenth Day of *May* at the *Guildhall* of the City of *London* aforeſaid, by Form of the Statute, *&c.* for Default of the Jurors, *&c.* At which Day before our Lord the King at *Wiſtminſter* the ſaid *Robert Richardſon* the Father and *Elizabeth* his Wife come by their Attorney aforeſaid, and the aforeſaid Chief Juſtice, before whom the ſaid Iſſue was tried, ſent here his Record had in theſe Words:

Poſtea. Words: Afterwards, at the Day and Place within contained, before

Chief Juſtice within named, having aſſociated to him

Gentleman, by Form of the Statute, and ſo forth, came as well the within-named *Robert Richardſon* Gentleman and *Elizabeth* his Wife Plaintiffs, by their Attorney within contained, as the within contained *John Sedgwick* and *Elizabeth* his Wife, and *Edmund Ducket* Defendants, by their Attorney within named; and the Jurors of that Jury being ſummoned likewiſe came, who to ſay the Truth of the within Contents being choſen, tried and ſworn, ſay upon their Oaths, That the Writing within mentioned was the Deed of the ſaid *Thomas Penny*, otherwiſe *Penne*, within named, as the ſaid *Robert Richardſon* and *Elizabeth* his Wife have within affirmed: Therefore, *&c.*

Verdict for Plaintiff.

Declaration againſt the Drawer of an inland Bill of Exchange, payable to Plaintiff.

London. *Nathaniel Knight* complains of *Edward Parſon* in the Cuſtody of the Marſhal of the *Marſhalſea* of our Lord the King, before the King himſelf, for that, *to wit*, that whereas the ſaid *Nathaniel* and *Edward*, and one *John Penny*, and *Matthew Rolleſton*, now are, and at the Time of making the Bill hereafter mentioned, and long before, and ever ſince, were Perſons reſiding and dealing within this Kingdom, *to wit*, at *London* aforeſaid in the Pariſh of St. *Mary le Bow* in the Ward of *Cheap*, and ſo reſiding and dealing the ſaid *Edward* on the ſixteenth Day of *May* in the

16 May

Year

3d. Caſes Entries 929 for a Decl. al. & Suit of Partners, on Bill indorſed to one of ye Partners in ye Name of himſelf & Co

Year of our Lord one Thouſand ſeven Hundred and at *London* aforeſaid in the Pariſh and Ward aforeſaid, according to the Uſage and Cuſtom of Merchants at that Time, to the Contrary whereof the Memory of Man is not, at the ſame Place uſed and approved, made a Bill of *Exchange* in Writing, his Hand being thereunto ſubſcribed, bearing Date the ſame Day and Year, and then and there directed the ſaid Bill to the aforeſaid *John Penny*, by which Bill the ſaid *Edward* required the ſaid *John*, thirty Days after the Date thereof, to pay to the ſaid *Nathaniel Knight*, or his Order, forty Pounds, for Value received, as by Advice from the ſaid *Edward*; and the ſaid Sum of Money being unpaid to the ſaid *Nathaniel*, the ſaid *Nathaniel* afterwards, *to wit*, on the ſame Day and Year at *London* aforeſaid in the Pariſh and Ward aforeſaid, according to the aforeſaid Uſage and Cuſtom of Merchants, indorſed the ſaid Bill, his Hand being thereunto ſubſcribed, and by the ſaid Indorſement the ſaid *Nathaniel* appointed the Contents of the ſaid Bill to be paid to the ſaid *Matthew Rolleſton*, or his Order; and the ſaid *John* afterwards, *to wit*, on the ſame Day and Year at *London* aforeſaid in the Pariſh and Ward aforeſaid, according to the ſaid Uſage and Cuſtom of Merchants, had Sight of the ſaid Bill ſo indorſed, and accepted the ſaid Bill to be paid according to the Tenor of the ſaid Bill and Indorſement; but the ſaid *John* did not pay the ſaid *Matthew* the ſaid

Plaintiff indorſes the Bill.

Bill accepted.

Not paid.

1. July

ſaid forty Pounds, although the ſaid *John* afterwards, *to wit*, on the firſt Day of *July* in the Year aforeſaid, at *London* aforeſaid in the Pariſh and Ward aforeſaid, was required by the ſaid *Matthew* to pay the ſame: And afterwards, *to wit*, on the ſaid firſt Day of *July* in the Year of our Lord aforeſaid at *London* aforeſaid in the Pariſh and Ward aforeſaid, the ſaid Sum of Money being unpaid to the ſaid *Matthew*, he the ſaid *Matthew*, according to the ſaid Uſage and Cuſtom of Merchants, indorſed the ſaid Bill, his Hand being thereunto ſubſcribed, and by the ſaid Indorſement, the ſaid *Matthew* appointed the Contents of the ſaid Bill to be paid to the ſaid *Nathaniel*, or Order; and the ſaid *Nathaniel* afterwards, *to wit*, on the ſaid firſt Day of *July* in the Year of our Lord aforeſaid, at *London* aforeſaid in the Pariſh and Ward aforeſaid, requeſted the ſaid *John* to pay him the ſaid *Nathaniel* the ſaid Sum of Money, according to the Tenor of the ſaid Bill and Indorſement, which the ſaid *John* then and there entirely refuſed to do; and the ſaid *John* never paid the ſaid forty Pounds to the ſaid *Nathaniel*, of which the ſaid *Edward* on the Day and Year laſt mentioned at *London* aforeſaid in the Pariſh and Ward aforeſaid, had Notice; by Reaſon of which ſaid Premiſſes, and alſo by Force of the ſaid Uſage and Cuſtom of Merchants, the ſaid *Edward* according to the ſaid Uſage and Cuſtom of Merchants, became liable to pay to the ſaid *Nathaniel* the ſaid Sum of Money, according to the

Indorſed back to Plaintiff.

Form and Effect of the ſaid Bill and Indorſement; and being ſo liable the ſaid *Edward* afterwards, *to wit*, on the ſaid firſt Day of *July* in the Year aforeſaid, in the Pariſh and Ward aforeſaid, undertook and then and there faithfully promiſed the ſaid *Nathaniel* to pay him the ſaid Sum of Money, according to the Form and Effect of the ſaid Bill and Indorſement; yet the ſaid *Edward* no ways, *&c.*

Trinity *Term in the* *Year of King* George *the Second.*

London. SAMUEL *Robinſon* complains of *William Cary* in the Cuſtody of the Marſhal of the *Marſhalſea* of our Lord the King, before the King himſelf, for that, *to wit*, that whereas one *William Hulſe*, on the twenty-ſecond Day of *April* new Stile, in the Year of our Lord one thouſand ſeven hundred and and long before and after, was a Merchant reſiding and trafficking at *Middleburg* in Parts beyond the Seas; and whereas the ſaid *William Cary* was and ſtill is a Merchant reſiding and trafficking at *London*, *to wit*, in the Pariſh of St. *Mary le Bow* in the Ward of *Cheap*; and whereas the ſaid *William Hulſe* afterwards, *to wit*, on the ſame Day and Year, at *Middleburgh* aforeſaid, according to the Uſage and Cuſtom of Merchants, made a Bill of Exchange in Writing, bearing Date the ſame Day and Year aforeſaid, and to the ſaid Bill of Exchange then

Declaration on a Foreign Bill of Exchange.

22 April

then and there ſubſcribed his Hand, by the Name of *William Hulſe*, and directed the ſaid Bill to the ſaid *William Cary* Merchant at *London* aforeſaid, and by the ſaid Bill the ſaid *William Hulſe* required the ſaid *William Cary*, in ſix Weeks after the Date of the ſaid Bill, to pay to the Order of Mr. *John Blondell* ſixty Pounds Sterling for Value received, as by Advice from the ſaid *William Hulſe*; and alſo whereas the ſaid *John Blondell* afterwards, *to wit*, on the tenth Day of *May* in the Year aforeſaid, at *London* aforeſaid in the Pariſh and Ward aforeſaid, by his Indorſement, his Hand being thereunto ſubſcribed, appointed the Contents of the ſaid Bill to be paid to one *Jacob Coornhart*, or Order, Value received; and alſo whereas the ſaid *Jacob Coornhart* afterwards, *to wit*, on the ſaid tenth Day of *May* in the Year aforeſaid, at *London* aforeſaid in the Pariſh and Ward aforeſaid, by his Indorſement, his Hand being thereunto ſubſcribed, appointed the Contents of the ſaid Bill to be paid to the ſaid *Samuel Robinſon*; and whereas the ſaid *William Cary*, to whom the ſaid Bill of Exchange was directed as aforeſaid, afterwards, *to wit*, on the ſame Day and Year laſt abovementioned, at *London* aforeſaid in the Pariſh and Ward aforeſaid, according to the ſaid Uſage and Cuſtom of Merchants, accepted the ſaid Bill to pay the ſaid ſixty Pounds Sterling, in the ſaid Bill mentioned, to the ſaid *Samuel Robinſon*, according to the Tenor and Effect of the ſaid Bill and Indorſements thereon made as aforeſaid,

Indorſed.

10 May

Indorſed to Plaintiff.

ſaid, of which the ſaid *William Cary* then and there had Notice; by reaſon of which ſaid Premiſſes, and according to the ſaid Uſage and Cuſtom of Merchants, the ſaid *William Cary* became liable to pay to the ſaid *Samuel Robinſon* the ſaid ſixty Pounds Sterling in the ſaid Bill contained, according to the Tenor and Effect of the ſaid Bill and the Indorſements thereon made as aforeſaid; and the ſaid *William Cary* being ſo liable, afterwards, *to wit*, on the ſame Day and Year laſt above-mentioned, at *London* aforeſaid in the Pariſh and Ward aforeſaid, in Conſideration thereof undertook, and then and there faithfully promiſed the ſaid *Samuel* to pay him the ſaid Sum of Money in the ſaid Bill contained, according to the Tenor and Effect of the ſaid Bill and Indorſements; yet the ſaid *William Cary* no ways, *&c.*

Trinity *Term in the* *Year of*, &c.

London, *to wit*, *William Knight*, Aſſignee of the Debts, Goods and Effects of *Thomas Wilks*, a Bankrupt, according to the Form of the ſeveral Statutes made concerning Bankrupts, complains of *Richard Wilks* in the Cuſtody of the Marſhal of the *Marſhalſea* of our Lord the King, before the King himſelf, for that, *to wit*, that whereas the ſaid *Richard*, on the tenth Day of *April* in the Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, at *London* aforeſaid, *to wit*, in the Pariſh of St. *Mary le Bow* in the

Indeb. Aſſ. *by Aſſignee of a Bankrupt's Eſtate for Goods ſold and delivered by Bankrupt.*

Ward of *Cheap*, was indebted to the ſaid *William* as Aſſignee in form aforeſaid in one hundred Pounds lawful Money of *Great Britain*, for divers Goods, Wares and Merchandizes, before that Time ſold and delivered by the ſaid *Thomas Wilks* to the ſaid *Richard Wilks*, at his ſpecial Inſtance and Requeſt; and being ſo indebted the ſaid *Richard* in Conſideration thereof, afterwards, *to wit*, on the ſame Day and Year at *London* aforeſaid in the Pariſh and Ward aforeſaid, undertook and then and there promiſed the ſaid *William*, as Aſſignee in form aforeſaid, that he the ſaid *Richard*, when he ſhould be thereunto required, would pay the ſaid one hundred Pounds to the ſaid *William*, as Aſſignee in form aforeſaid; and alſo whereas the ſaid *Richard*, afterwards, *to wit*, on the ſaid tenth Day of *April* in the Year aforeſaid, at *London* aforeſaid in the Pariſh and Ward aforeſaid, in Conſideration that the ſaid *Thomas Wilks* had before that Time ſold and delivered to the ſaid *Richard Wilks*, at his like ſpecial Inſtance and Requeſt, divers other Goods, Wares and Merchandize, undertook, and then and there promiſed the ſaid *William*, as Aſſignee in form aforeſaid, that he the ſaid *Richard*, when the ſhould be thereunto required, would pay to the ſaid *William*, as Aſſignee in form aforeſaid, ſo much Money for the ſaid Goods, Wares, and Merchandizes laſt mentioned, as the ſaid Goods, Wares and Merchandize were reaſonably worth at the Time of the Sale and Delivery thereof,

thereof; and the ſaid *William* avers, that the ſaid Goods, Wares and Merchandize laſt mentioned, were at the Time of the Sale and Delivery thereof, by the ſaid *Thomas Wilks*, to the ſaid *Richard Wilks*, reaſonably worth other one hundred Pounds of like lawful Money of *Great Britain*, *to wit*, at *London* aforeſaid in the Pariſh and Ward aforeſaid, of which the ſaid *Richard* then and there had Notice; yet the ſaid *Richard*, not regarding his ſaid ſeveral Promiſes and Undertakings made in form aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *William*, as Aſſignee in form aforeſaid, in this behalf, has not paid the ſaid ſeveral Sums of Money or any Part thereof (although often required) to the ſaid *William*, nor any way contented him for the ſame; but to pay the ſame hath hitherto refuſed, and ſtill doth refuſe, to the Damage of the ſaid *William* of twenty Pounds; and thereupon he brings Suit, *&c.*

Pledges, *&c.*

London, *to wit*, *John Furgeon*, late of *Weſtminſter* in the County of *Middleſex*, Merchant, was attached to anſwer *John Adams* of a Plea of Treſpaſs on the Caſe, *&c.* and whereupon the ſaid *John Adams* by his Attorney complains, that whereas the ſaid *John Furgeon*, together with *Daniel Barbalt* late of *Greenwich* in the County of *Kent*, Feltmonger, which ſaid

Declaration againſt two Partners, where one is Outlawed and the other appears.

Indeb. Aſſ. *for Goods ſold and delivered.*

ſaid *Daniel Barbalt* is in due manner outlawed in the Court of our Lord the King, before the King himſelf, on the firſt Day of *Auguſt* in the Year of our Lord One thouſand ſeven hundred and thirty-eight, at *London*, *to wit*, in the Pariſh of St. *Mary le Bow* in the Ward of *Cheap*, was indebted to the ſaid *John Adams* in one hundred and forty Pounds eight Shillings and Eight-pence lawful Money of *Great Britain*, for divers Goods, Wares and Merchandize, before that Time ſold and delivered by the ſaid *John Adams* to the *John Furgeon* and the ſaid *Daniel Barbalt*, who, *&c.* at their ſpecial Inſtance and Requeſt; and being ſo indebted, the ſaid *John Furgeon* and the aforeſaid *Daniel Barbalt*, who, *&c.* in Conſideration thereof, afterwards, *to wit*, on the ſame Day and Year, at *London* aforeſaid in the Pariſh and Ward aforeſaid, undertook, and then and there faithfully promiſed the ſaid *John Adams*, that they the ſaid *John Furgeon* and the ſaid *Daniel Barbalt*, who, *&c.* would well and truly pay the ſaid one hundred and forty Pounds eight Shillings and Eight-pence to the ſaid *John Adams*, when they ſhould be thereunto afterwards required: Nevertheleſs the ſaid *John Furgeon* and *Daniel Barbalt*, who, *&c.* before the ſaid Outlawry was had, contriving and fradulently intending of the ſaid one hundred and forty Pounds eight Shillings and eight-pence craftily and ſubtilly to deceive and defraud the ſaid *John Adams*, the ſaid one hundred and forty Pounds

Breach of Promiſe.

Pounds eight Shillings and Eight-pence to the ſaid *John Adams* (although to do the ſame the ſaid *John Furgeon* and *Daniel Barbalt*, who, *&c.* before the ſaid Outlawry was had, afterwards, *to wit*, on the firſt Day of *Auguſt* in the ſaid Year of our Lord One thouſand ſeven hundred and thirty-eight, and the ſaid *John Furgeon* often afterwards, at *London* aforeſaid in the Pariſh and Ward aforeſaid, were required by the ſaid *John Adams*) have not, nor has either of them paid, nor have they nor has either of them any ways contented him for the ſame, but have hitherto intirely refuſed to pay the ſaid one hundred and forty Pounds eight Shillings and eight-pence to the ſaid *John Adams*, or any ways content him for the ſame; and the ſaid *John Furgeon* ſtill refuſes to pay him the ſaid Sum, to the Damage of the ſaid *John Adams* of one hundred and forty Pounds; and thereupon he brings Suit, *&c.*

Aſſumpſit by an Indorſee againſt the Maſter on a promiſſory Note drawn by and in the Name of the Servant for Value received for his Maſter.

To wit, *Thomas Eeles* complains of *Thomas Styles* in the Cuſtody of the Marſhal, *&c.* for that, That whereas on the ſeventeenth Day of *March* in the Year of our Lord One thouſand ſeven hundred and thirty-ſeven, and long before, one *Ralph Roletſon* was a Servant of the ſaid *Thomas Styles*, and by the ſaid *Thomas Styles* then and long before uſually entruſted to Sign promiſſory Notes for the ſaid *Thomas Styles* his Maſter, *to wit*, at *London* aforeſaid, in the Pariſh and Ward aforeſaid; and the ſaid *Ralph* being ſo entruſted as aforeſaid, on the ſame ſeven-

teenth Day of *March* in the Year of our Lord One thouſand ſeven hundred and thirty-ſeven, at *London* aforeſaid in the Pariſh and Ward aforeſaid, made for the ſaid *Thomas Styles* a certain Note in Writing called a promiſſory Note, bearing Date the ſame Day and Year laſt mentioned, the proper Hand and Name of the ſaid *Ralph* being ſubſcribed to the ſaid Note, and by the ſaid Note the ſaid *Ralph* promiſed to pay to one *James Ford*, or Order, ſix Months after the Date of the ſaid Note eighty Pounds, Value received, for the ſaid *Thomas Styles*, Maſter of the ſaid *Ralph*; and the ſaid *Thomas Eeles* further ſays, that afterwards, and before Payment or Satisfaction of the ſaid Sum of eighty Pounds in the ſaid Note contained *to wit*, on the twenty-fifth Day of *March* in the Year of our Lord One thouſand ſeven hundred and thirty-eight, at *London* aforeſaid in the Pariſh and Ward aforeſaid, the ſaid *James* by Indorſement, his proper Hand being indorſed on the ſaid Note, appointed the Contents of the ſaid Note to be paid to the ſaid *Thomas Eeles*, for Value received; of which ſaid Note ſo indorſed, and alſo of the ſaid Indoſement, the ſaid *Thomas Styles* afterwards, *to wit*, on the ſaid twenty-fifth Day of *March* in the Year of our Lord laſt above-mentioned, at *London* aforeſaid in the Pariſh and Ward aforeſaid, had Notice; and by Virtue of the ſaid Note and Indorſement aforeſaid, and alſo by Force of the Statute in ſuch Caſe lately made and provided,

Note Indorſed.

provided, the ſaid *Thomas Styles*, then and there became liable to pay the ſaid *Thomas Eeles*, the ſaid eighty Pounds in the Note mentioned, according to the Tenor of the ſaid Note; and being ſo liable the ſaid *Thomas Styles*, in Conſideration thereof, afterwards, *to wit*, on the ſame Day and Year laſt abovementioned, at *London* aforeſaid in the Pariſh and Ward aforeſaid, undertook, and then and there faithfully promiſed the ſaid *Thomas Eeles*, that he the ſaid *Thomas Styles* would well and faithfully pay to the ſaid *Thomas Eeles* the ſaid eighty Pounds according to the Tenor of the ſaid Note and Indorſement: Nevertheleſs the ſaid *Thomas Styles*, &c.

Pleas before our Lord the King at Weſtminſter, *of the Term of St.* Hilary *in the Fifth Year of the Reign of our Sovereign Lord* George *the Second, now King of* Great Britain, *&c.*

R. 530.

London, to wit. BE it remembered that on *Monday* next after the Octave of St. *Hilary* in this ſame Term before our Lord the King at *Weſtminſter*, came the Governor and Company of the Bank of *England*, by their Attorney, and brought here into the ſaid Court

Memorandum *of the ſame Term.*

of our Lord the King then there, their Bill againſt *Catherine Morice*, Widow, Executrix of the laſt Will and Teſtament of *Humphry Morice*, Eſq; deceas'd, in the Cuſtody of the Marſhal of the *Marſhalſea* of our Lord the King, before the King himſelf, of a Plea of Treſpaſs on the Caſe; and there are Pledges of proſecuting, *to wit*, *John Doe* and *Richard Roe*; which ſaid Bill follows in theſe Words, *to wit*, London, *to wit*, The Governor and Company of the Bank of *England* complain of *Catherine Morice*, Widow, Executrix of the laſt Will and Teſtament of *Humphry Morice*, Eſq; deceas'd, in the Cuſtody of the Marſhal, *&c.* for that, *to wit*, That whereas (*the Plaintiffs declare on thirty Counts for various particular Sums of Money lent, and Money had and received to the Plaintiffs Uſe* alternatim, *and then declare as follows*,) and alſo whereas, afterwards, *to wit*, on the ſaid 15th Day of *November* in the ſaid Year of our Lord 1731. at *London* aforeſaid in the Pariſh and Ward aforeſaid, he the ſaid *Humphry Morice* in his Life-time was indebted to the ſaid Governor and Company in 32000 *l.* lawful Money of *Great Britain*, for divers Sums of Money before that Time lent by the ſaid Governor and Company to the ſaid *Humphry Morice* in his Life-time; and being ſo indebted the ſaid *Humphry Morice* in his Life-time in Conſideration thereof, afterwards, *to wit*, on the ſaid 15th of *November* in the ſaid Year of our Lord 1731. at *London* aforeſaid

Declaration againſt an Executrix.

31ſt Count, Indeb. Aſſ. *for Money lent Teſtator.*

ſaid in the Pariſh and Ward aforeſaid, undertook, and then and there faithfully promiſed the ſaid Governor and Company, that he the ſaid *Humphry* would well and truly pay the ſaid 32000 *l.* to the ſaid Governor and Company, when he ſhould be thereunto afterwards required: And alſo whereas afterwards, *to wit*, on the ſame Day and Year, at *London* aforeſaid in the Pariſh and Ward aforeſaid, he the ſaid *Humphry* in his Life-time was indebted to the ſaid Governor and Company in other 32000 *l.* like lawful Money of *Great Brttain*, for divers Sums of Money by him the aforeſaid *Humphry*, in his Life-time before that Time had and received to the Uſe of the ſaid Governor and Company; and being ſo indebted the ſaid *Humphry* in his Life-time afterwards, *to wit*, on the ſame Day and Year at *London* aforeſaid in the Pariſh and Ward aforeſaid, in Conſideration thereof, undertook and then and there faithfully promiſed the ſaid Governor and Company, that he the ſaid *Humphry Morice* would well and truly pay the ſaid 32000 *l.* laſt mentioned to the ſaid Governor and Company, when he ſhould be thereunto afterwards required: And alſo, whereas on the 15th Day of *November* in the ſaid Year of our Lord 1731. at *London* aforeſaid in the Pariſh and Ward aforeſaid, he the ſaid *Humphry* in his Life-time was indebted to the ſaid Governor and Company in other 32000 *l.* like lawful Money of *Great Britain*, for Money for the ſaid *Humphry* in

32d Count, Indeb. Aſſ. *for Money had and received by the Teſtator.*

33d Count, Indeb. Aſſ. *for Money laid out for Teſtator.*

in his Life-time, and at his ſpecial Inſtance and Requeſt, before that Time expended, laid out and paid by the ſaid Governor and Company; and being ſo indebted the ſaid *Humphry* in Life-time afterwards, *to wit*, on the ſame Day and Year at *London* aforeſaid in the Pariſh and Ward aforeſaid, in Conſideration thereof, undertook, and then and there faithfully promiſed the ſaid Governor and Company, that he the ſaid *Humphry* would well and truly pay the ſaid 32000*l.* laſt mentioned, to the ſaid Governor and Company, when he ſhould be thereunto afterwards required:

Breach. Yet the ſaid *Humphry* in his Life-time, and the ſaid *Catherine* after the Death of the ſaid *Humphry*, no ways regarding the Promiſes and Undertakings of the ſaid *Humphry* in his Life-time made in form aforeſaid to the ſaid Governor and Company, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid Governor and Company, in this behalf, have not paid, nor has either of them paid the ſaid ſeveral Sums of Money, or any Part thereof, to the ſaid Governor and Company (although the ſaid *Humphry* in his Life-time, and the ſaid *Catherine* after the Death of the ſaid *Humphry*, *to wit*, on the 10th Day of *December* in the ſaid Year of our Lord 1731. and often afterwards, at *London* aforeſaid in the Pariſh and Ward aforeſaid, were required by the ſaid Governor and Company) but to pay them the ſame have

have intirely refuſed, and the ſaid *Catherine* ſtill refuſes: Whereupon the ſaid Governor and Company ſay, that they are injured and have Damage to the Value of 35000 *l.* and thereupon they bring Suit, *&c.*

Plea.

And the ſaid *Catherine* by her Attorney comes and defends the Force and Injury, when, *&c.* and ſays, That the ſaid Governor and Company ought not to have their ſaid Action againſt her, becauſe ſhe ſays that the ſaid *Humphry* in his Life-time, *to wit*, on the 6th Day of *March* in the Year of our Lord 1727. at *London* aforeſaid in the Pariſh and Ward aforeſaid, for a true and juſt Debt, by his certain Writing Obligatory ſealed with his Seal, bearing Date the ſame Day and Year, acknowleged himſelf to be bound to one Sir *William Morice*, Baronet, in 53000 *l.* lawful Money of *Great Britain*, to be payed to the ſaid Sir *William*, when he ſhould be thereunto afterwards required, with a Condition to the ſaid Writing Obligatory under written, that if the ſaid *Humphry*, his Heirs, Executors or Adminiſtrators ſhould well and truly pay or cauſe to be paid to the ſaid Sir *William*, his Executors, Adminiſtrators or Aſſigns, the full Sum of 26500 *l.* good and lawful Money of *Great Britain*, with Intereſt for the ſaid Sum at the Rate of five Pounds for a hundred Pounds for a Year, at and upon the ſeveral Days and Times in manner and form following, *viz.* the Sum of 5000 *l.* Parcel of the ſaid Sum of 26500 *l.* upon the 24th Day of *June* which ſhould be

A Bond entred into by Teſtator.

The Condition ſet forth.

be in the Year of our Lord 1728. together with all Intereſt then due for the ſaid Sum of 26500 *l.* and the Sum of 5000 *l.* other Parcel of the ſaid Sum of 26500 *l.* with Intereſt for the ſaid 5000 *l.* upon the 24th Day of *June* which ſhould be in the Year of our Lord 1729. together with the Intereſt then alſo due for the Sum of 16500 *l.* Reſidue of the ſaid Sum of 26500 *l.* then due and unpaid, and the Sum of 5000 *l.* more thereof with Intereſt for the ſaid Sum on the 24th Day of *June* which ſhould be in the Year of our Lord 1730. together alſo with the Intereſt then likewiſe due for the Sum of 11500 *l.* Reſidue of the ſaid Sum of 26500 *l.* then in Arrear and unpaid, and the further Sum of 5000 *l.* more thereof with Intereſt for the ſame, on the 24th Day of *June* which ſhould be in the Year of our Lord 1731. together alſo with the Intereſt then likewiſe due for the Sum of 6500 *l.* Reſidue of the ſaid Sum of 26500 *l.* then in Arrear and unpaid, and likewiſe the Sum of 5000 *l.* more thereof with Intereſt for the ſame on the 24th Day *June* which ſhould be in the Year of our Lord 1732. together alſo with the Intereſt then likewiſe due for the Sum of 1500 *l.* Reſidue of the ſaid Sum of 26500 *l.* then in Arrear and unpaid, and the Sum of 1500 *l.* being the Reſidue and Remainder of the ſaid Sum of 26500 *l.* on the 24th Day of *June* which ſhould be in the Year of our Lord 1733. together with the Intereſt then due for the ſaid Sum of 1500 *l.*

without

without Fraud or further Delay; then the ſaid Obligation to be void and of no effect; but if Default ſhould be made in Payment of any or either of the ſaid ſeveral and reſpective Sums of Money above mentioned, or of any Part of any or either of them, or of any of the ſaid Intereſt, upon any or either of the ſaid ſeveral and reſpective Days or Times above limited or appointed for Payment thereof, contrary to the true Intent and Meaning of the ſaid Condition, then the ſaid Obligation to be and remain in full Force and Effect; provided nevertheleſs, and the ſaid Obligation was upon this further Condition, that it ſhould be lawful for the ſaid *Humphry Morice*, his Heirs, Executors or Adminiſtrators, to pay, ſatisfy and diſcharge the ſaid Sum of 26500 *l.* and Intereſt or any Part or Parts thereof, at any ſhorter Time or Times than were in the ſaid Condition before limited and appointed for Payment thereof, in Payments not leſs than 5000 *l.* at one time (the laſt Payment thereof excepted) the ſaid *Humphry Morice*, his Heirs, Executors or Adminiſtrators, firſt giving ſix Months Notice in Writing under his or their Hand or Hands to the ſaid Sir *William Morice*, his Executors, Adminiſtrators or Aſſigns, of ſuch his or their Intent of ſo doing, at the laſt Place of Abode of the ſaid Sir *William Morice*, or if the ſaid Sir *William Morice* ſhould be then dead, to his Executors or Adminiſtrators: And the ſaid *Catherine* further ſays, that the ſaid 5000 *l.*

Aſſignment of Condition unperformed, and what really due.

5000 *l.* in the ſaid Condition above mentioned to be payable on the 24th of *June* in Year of our Lord 1732. and the ſaid 1500 *l.* in the ſaid Condition above mentioned to be payable upon the 24th Day *June* in the Year of our Lord 1733. together with all Intereſt for the ſaid ſeveral Sums of 5000 *l.* and 1500 *l.* laſt mentioned due and payable from the 24th Day of *June* in the Year of our Lord 1731. are ſtill unpaid, and the ſaid Writing Obligatory ſtill remains in its full Force and Effect, no ways annulled, cancelled or any ways ſatisfied; (*the Defendant then pleads eight ſeveral Articles entred into by Teſtator with Captains of his Ships bound on Voyages*, &c. *Then Defendant pleads another Bond entred into by the Teſtator as Security for a third Perſon, and goes on*) And the ſaid *Catherine* further ſays, that the ſaid *Humphry* in his Life time, *to wit*, on the 27th Day of *July* in the Fourth Year of the Reign of his preſent Majeſty, at *London* aforeſaid in the Pariſh and Ward aforeſaid, for another true and juſt Debt, by his certain other Writing Obligatory ſealed with his Seal, bearing Date the ſame Day and Year laſt aboveſaid, acknowleged himſelf to be bound to one *Thomas Wilſon*, Eſq; in the Sum of 5000 *l.* like lawful Money, to be payed to the ſaid *Thomas* when he ſhould be thereunto afterwards required, with a Condition there-under written for Payment of 2500 *l.* like lawful Money upon the 27th Day of *July* in the Year

Pleads another Bond.

Sets forth the Condition,

Year of our Lord 1731. with lawful Intereſt for the ſame, to be made by the ſaid *Humphry* to the ſaid *Thomas*, which ſaid 2500 *l.* together with the Intereſt thereof from the 27th Day in the Year of our Lord 1731. was at the Time of the Death of the ſaid *Humphry* truly and juſtly due from the ſaid *Humphry* to the ſaid *Thomas*, and is ſtill unpaid, and the ſaid Writing Obligatory laſt mentioned ſtill remains in its full Force and Effect, no ways annulled, cancelled, or any ways ſatisfied; and the ſaid *Catherine* further ſays, that the ſaid *Humphry* afterwards in his Life-time, *to wit*, on the twenty-fifth Day of *March* in the Fourth Year of His preſent Majeſty's Reign, at *London* aforeſaid in the Pariſh and Ward aforeſaid, for another true and juſt Debt, by a certain other Writing Obligatory ſealed with his Seal, bearing Date the ſame Day and Year laſt above mentioned, acknowledged himſelf to be bound to one *Duncan Campbell*, Gentleman, in three thouſand Pounds like lawful Money to be paid to the ſaid *Duncan*, when he ſhould be thereunto afterwards required, with a Condition there-under written for Payment of one thouſand and five hundred Pounds like lawful Money, to be made by the ſaid *Humphry* to the ſaid *Duncan*, upon or before the firſt Day of *May* then next enſuing, with lawful Intereſt for the ſame; which ſaid 1500 *l.* with the Intereſt thereof from the 25th Day of *September* in the Year of our Lord 1731. was juſtly and truly due to the ſaid

and the real Debt due.

Pleads another Bond.

Sets forth the Condition,

and the real Debt.

ſaid *Duncan* from the ſaid *Humphry* at the Time of his Death, and ſtill remains unpaid, and the ſaid Writing Obligatory laſt abovementioned ſtill remains in it's full Force and Effect, no ways annulled, cancelled or any ways ſatisfied: And the ſaid *Catherine* further ſays, that one *Jacob Munickhoven* on the 6th Day of *November* New Stile (being the 26th Day of *Oct.* Old Stile,) in the Year of our Lord 1731. reſiding at *Amſterdam* in Parts beyond the Seas, and trading as a Merchant, then and there, according to the Uſage and Cuſtom of Merchants, made a certain Bill of Exchange bearing Date the ſame Day and Year, the proper Hand of the ſaid *Jacob* being thereto ſubſcribed, and directed the ſaid Bill to the ſaid *Humphry* in his Life-time, then reſiding at *London* aforeſaid in the Pariſh and Ward aforeſaid, and trading as a Merchant, and by the ſaid Bill required the ſaid *Humphry* at two Uſances and eight Days to pay that his firſt of Exchange to Mr. *John Shuckforth*, or Order, 1987 *l.* 10 *s.* Sterling, for Value receiv'd of the ſaid *John Shuckforth*, and place the ſame to Account, as by Advice from him the ſaid *Jacob*; and the ſaid *Humphry*, afterwards in his Life-time, *to wit*, on the 10th Day of *November* in the Year of our Lord 1731. *Old Stile*, at *London* aforeſaid in the Pariſh and Ward aforeſaid, had Sight of the ſaid Bill, and then and there, according to the Uſage and Cuſtom of Merchants, accepted the ſaid Bill, to pay the ſaid Money in the ſaid Bill contained, according to the

Pleads a Judgment recovered againſt Heir as Executrix on a Bill of Exchange drawn on and accepted by Teſtator.

26. Oct. 1731

10 Nov. 1731

Tenor of the ſaid Bill, which ſaid two Uſances and eight Days, according to the Uſage and Cuſtom of Merchants at the ſaid Time of making the ſaid Bill, and alſo from the Time to the Contrary whereof the Memory of Man is not, have been and now are two Calendar Months and eight Days, *to wit*, at *London* aforeſaid in the Pariſh and Ward aforeſaid; and afterwards in the Life-time of the ſaid *Humphry*, *to wit*, on the 12th Day of *November* in the ſaid Year of our Lord 1731. *Old Stile*, at *London* aforeſaid in the Pariſh and Ward aforeſaid, the ſaid *John Shuckworth* by his Indorſement made upon the ſaid Bill according to the Uſage and Cuſtom of Merchants, his Hand being thereunto ſubſcribed, appointed the Contents of the ſaid Bill to be paid to one *John Maynard*, or Order, whereof the ſaid *Humphry* afterwards in his Life-time, *to wit*, on the ſame Day and Year laſt aboveſaid, at *London* aforeſaid in the Pariſh and Ward aforeſaid, had notice; and by reaſon thereof the ſaid *Humphry* in his Life-time, according to the Uſage and Cuſtom of Merchants, became liable to pay to the ſaid *John Maynard* the ſaid Sum of Money in the ſaid Bill contained, according to the Tenor of the ſaid Bill and Indorſement, and being ſo liable the ſaid *Humphry* afterwards in his Life-time, *to wit*, on the ſame Day and Year laſt aboveſaid, at *London* aforeſaid in the Pariſh and Ward aforeſaid, in Conſideration thereof undertook and then there faithfully promiſed the ſaid *John Maynard* to pay him the ſaid Sum of Money according to the Tenor of the ſaid Bill and Indorſement, which ſaid 1987*l.* 10*s.* at the

Time after the Death of the ſaid *Humphry*, were by the ſaid *Humphry* truly and juſtly due and unpaid to the ſaid *John Maynard*; and the ſaid Money is ſtill unpaid to him; And that the aforeſaid *John Maynard* after the Death of the ſaid *Humphry*, for recovering his Damages which he had ſuſtained by Occaſion of the not paying the ſaid Money, *to wit*, in this ſame *Hilary* Term in the Fifth Year of his preſent Majeſty's Reign, impleaded the ſaid *Catherine* as Executrix of the laſt Will and Teſtament of the ſaid *Humphry*, in the Court of our ſaid Lord the King, before the King himſelf, the ſaid Court then and now being at *Weſtminſter* in the ſaid County of *Middleſex*, by Bill without Writ in a certain Plea of Treſpaſs upon the Caſe, upon undertaking upon the ſaid Bill of Exchange, to the Damage of the ſaid *John Maynard* of 2000*l.* and it was in ſuch manner thereupon proceeded in the ſaid Court of our ſaid Lord the King before the King himſelf at *Weſtminſter*, that the ſaid *John Maynard* afterwards, *to wit*, in this ſame Term of St. *Hilary* in the fifth Year aforeſaid, in the ſaid Court of our ſaid Lord the King before the King himſelf at *Weſtminſter* aforeſaid, by the Conſideration of the ſaid Court, recovered againſt the ſaid *Catherine* 1992 *l.* 10 *s.* for his Damages which he had ſuſtained as well by occaſion of the not performing the ſaid Promiſe and Undertaking, as for his Coſts and Charges by him about his Suit in that behalf expended, to be levied of the Good and Chattels which were of the ſaid *Humphry* at the Time of his Death in the Hands of the ſaid *Catherine* to

be

be adminiſtred, if ſhe had ſo much in her Hands; and if ſhe had not ſo much, then 100*s.* of the ſaid Damages for the Coſts and Charges aforeſaid to be levied of the proper Goods and Chattels of the ſaid *Catherine*, whereof the ſaid *Catherine* was convicted, as by the Record and Proceedings thereupon remaining in the ſaid Court of our ſaid Lord the King before the King himſelf at *Weſtminſter* aforeſaid more fully appears; which ſaid Judgment ſtill remains in its full Force and Effect no ways reverſed, annulled or any ways ſatisfied, and the ſaid Money by the ſaid Judgment recovered is ſtill due and unpaid: And the ſaid *Catherine* further ſays, that ſhe has fully adminiſtred all the Goods and Chattels which were of the ſaid *Humphry* at the Time of his Death in her Hands to be adminiſtred, except Goods and Chattels to the Value of 1000 *l.* and that ſhe the ſaid *Catherine* has not, nor at the Day of exhibiting the Bill of the ſaid Governor and Company, nor at any time ſince had, any Goods or Chattels which were of the ſaid *Humphry* at the Time of his Death, in the Hands of her the ſaid *Catherine* to be adminiſtred, except the Goods and Chattels aforeſaid, to the ſaid Value of 1000 *l.* which are charged with the Payment of the ſaid ſeveral Sums due and payable by the ſaid ſeveral Writings Obligatory, Articles and Judgment: And this ſhe is ready to verify; wherefore ſhe prays Judgment if the ſaid Governor and Company ought to have or maintain their ſaid Action againſt her, *&c.* *Concluſion of the Plea.*

And the ſaid Governor and Company ſay, that they by any thing above alledged ought *Replication.*

not to to be barred from having their ſaid Action, becauſe they ſay that the ſaid *Catherine*, on the Day of exibiting the Bill of the ſaid Governor and Company, had divers Goods and Chattels which were of the ſaid *Humphry* at the Time of his Death in her Hands to be adminiſtred, over and above Goods and Chattels ſufficient to ſatisfy the ſaid ſeveral Sums due and payable by the ſaid ſeveral Writings Obligatory, Articles and Judgment aforeſaid, wherewith the ſaid *Catherine* could have ſatisfied the ſaid Governor and Company their ſaid Damages aforeſaid, *to wit*, at *London* aforeſaid in the Pariſh and Ward aforeſaid; and this they pray may be inquired of by the Country; and the ſaid *Catherine* likewiſe. And upon this the ſaid Governor and Company ſay, That *Thomas Pindar*, Eſq; in his own proper Right, has Right, Title and Intereſt to Part and Share of the Principal Stock of the ſaid Governor and Company, to the Value of 1500*l.* and now is a true Proprietor of the ſaid Stock, and that the ſaid *Thomas Pindar* is, and for the Space of three Months laſt paſt has been, one of the Members of the ſaid Company; and that *Samuel Ruſſel*, Eſq; in his own proper Right, has Right, Title and Intereſt to Part and Share of the principal Stock of the ſaid Governor and Company, to the Value of 1000*l.* and now is a true Proprietor of the ſaid Stock, and that the ſaid *Samuel Ruſſel* is, and for the Space of three Months laſt paſt has been, one of the Members of the ſaid Company; and that the ſaid *Thomas Pindar* and *Samuel Ruſſel* now are and for the

Iſſue. Sheriffs challenged and Venire facias *directed to the Coroner.*

Space of four Months laſt paſt have been Sheriffs, of *London* aforeſaid: And this they are ready to verify; and for that Cauſe the ſaid Governor and Company crave the Writ of our ſaid Lord the King to be directed to the Coroners of the City of *London* aforeſaid, to cauſe to come here Twelve, *&c.* to try the ſaid Iſſue joined between the Parties aforeſaid; and becauſe the ſaid *Catherine* does not deny, but acknowledges the ſaid Allegation of the ſaid Governor and Company, it is granted to them. Therefore let a Jury thereupon come before our Lord the King at *Weſtminſter* on *Saturday* next after the Octave of the Purification of the Bleſſed Virgin *Mary*, and who are in no wiſe of Kin either to the ſaid Governor and Company, or to the ſaid *Catherine*, to take Cognizance upon their Oaths of the whole Truth of the Premiſſes; becauſe as well the ſaid *Catherine*, as the ſaid Governor and Company, have put themſelves upon that Jury. The ſame Day is given to the Parties aforeſaid at the ſame Place: At which Day before our Lord the King at *Weſtminſter* came the Parties aforeſaid by their Attornies aforeſaid; and the Coroner of *London* did not return the ſaid Writ, nor did he do any thing thereupon: Therefore let a Jury thereupon, as before, come, before our Lord the King at *Weſtminſter* on *Wedneſday* next after fifteen Days from the Day of *Eaſter*, and who are in no wiſe of Kin either to the ſaid Governor and Company or to the ſaid *Catherine*, to take Cognizance upon their

Venire facias.

Non miſit breve.

Continuance.

their Oaths of the whole Truth of the Premiſſes; becauſe as well the ſaid *Catherine* as the ſaid Governor and Company have put themſelves upon that Jury. The ſame Day is given to the Parties aforeſaid at the ſame Place: At which Day before our Lord the King at *Weſtminſter* came the Parties aforeſaid by their Attornies aforeſaid; and the Coroner of *London* did not return the ſaid Writ, nor did he do any thing thereupon: Therefore, *&c.* (the *Venire facias* was continued in the ſame Manner by *Coronator non miſit breve*, to *Trinity* Term 1734.) Afterwards the Proceſs being continued between the Parties aforeſaid of the Plea aforeſaid, by the Jury being reſpited between them before our Lord the King at *Weſtminſter*, until *Wedneſday* next after three Weeks from the Day of St. *Michael* then next following, unleſs the King's Right truſty and well beloved *Philip* Lord *Hardwicke*, his Chief Juſtice aſſigned to hold Pleas before the King himſelf, ſhall firſt come on *Friday* the fifth Day of *July* at the *Guild-Hall* of the City of *London*, according to the the Form of the Statute in ſuch Caſe made and provided for Default of the Jurors, becauſe none of them did appear: At which Day before our Lord the King at *Weſtminſter* the aforeſaid Governor and Company come by the aforeſaid their Attorney aforeſaid; and the aforeſaid Chief Juſtice, before whom the ſaid Iſſue was tried, ſent thither his Record had in theſe Words,

Afterwards

Afterwards, that is to ſay, on the Day and at the Place within contained, before *Philip* Lord *Hardwicke* the Chief Juſtice within written, *Carleton Haywood*, Gent. being aſſociated unto the ſaid Chief Juſtice by Force of the Statute in that Caſe made and provided, came as well the within named Governor and Company of the Bank of *England* by their Attorney within contained, as the within named *Catherine Morice* by her Attorney within named, and the Jurors of that Jury having been ſummoned likewiſe come, *to wit*, *Solomon Merritt*, *Richard Bodiwate*, *James Randall*, *John Allen*, *John Aſton*, *Gilbert Malcher*, *James Lock*, *Benjamin Bond*, *Humphry Duncalf*, *Slingsby Bethell*, *Philip Smith* and *John Le Queſne*, who being choſen, tried and ſworn to declare the Truth of the Iſſue within contained, upon their Oath ſay, That *Humphry Morice* within mentioned was at the Time of his Death, which happened on the 16th Day of *November* which was in the Year of our Lord 1731. indebted to the Plaintiffs the ſaid Governor and Company of the Bank of *England* in the Sum of 28993 *l.* 8 *s.* 1 *d.* for ſo much Money by the ſaid *Humphry Morice* in his Life-time had and received to the Uſe of the ſaid Plaintiffs; and the ſaid Jurors upon their Oath further ſay, that the Money due at the Death of the ſaid *Humphry Morice* for principal Money and Intereſt of the Sums mentioned in the ſeveral Conditions of the within mentioned *Special Verdict.*

Bond from *Humphry Morice* to Sir *William Morice*, Bart. and on the within mentioned Bonds to *Thomas Wilſon* and *Duncan Campbell*, Eſqrs. together with the ſeveral penal Sums of all the other Specialties within pleaded, and the Money recovered by the Judgment within pleaded, amount together to the Sum of 22182 *l.* 10 *s.* which ſaid Sum of 22182 *l.* 10 *s.* or any Part thereof was not paid at the Time of Pleading the within contained Plea of the ſaid Defendant, but then remained due and unſatisfied, and that the Defendant *Catherine Morice*, at the Day of exhibiting the ſaid Plaintiffs Bill againſt her within mentioned, had Aſſets in her Hands of the ſaid *Humphry Morice* to the Value of 41152 *l.* 2 *s.* 5 *d.* and the ſaid Jurors upon their Oath further ſay, that on the aforeſaid Day of the Death of the ſaid *Humphry Morice* there was juſtly due and owing from him to the ſaid Sir *William Morice*, of the Sum payable by the Condition of his Bond within mentioned, and for all Intereſt due by the ſaid Condition, the Sum of 6530 *l.* and that there was due to the ſaid *Thomas Wilſon* from the ſaid *Humphry Morice* on the ſaid Day of his Death, for the principal Sum mentioned in the Condition of his Bond and for all Intereſt thereof, the Sum of 2520 *l.* and that there was due to the ſaid *Duncan Campbell* from the ſaid *Humphry Morice* on the aforeſaid Day of his Death, for the principal Sum mentioned in the Condition of his Bond and for all Intereſt thereof, the Sum

of

of 1540 *l.* as the ſaid *Catherine Morice* has alledged in the Plea within mentioned: And the ſaid Jurors upon their Oath further ſay, that on the Day of exhibiting the ſaid Plaintiffs Bill againſt the ſaid *Catherine Morice*, ſhe the ſaid *Catherine* had not in her Hands Aſſets of the ſaid *Humphry Morice* ſufficient to diſcharge the Penalties of the within mentioned three Bonds to Sir *William Morice*, *Thomas Wilſon* and *Duncan Campbell*, and that the ſaid Penalties or any of them were not then paid, nor diſcharged nor ſatisfied: And the ſaid Jurors upon their Oath further ſay, that deducting the above-mentioned Sum of 22182 *l.* 10 *s.* out of the ſaid Sum of 41152 *l.* 2 *s.* 5 *d.* there remained in the Hands of the ſaid *Catherine Morice*, on the Day of exhibiting the Plaintiffs ſaid Bill againſt her, the Sum of 18969 *l.* 12 *s.* 5 *d.* Aſſets of the ſaid *Humphry Morice*, liable to ſatisfie the aforeſaid Debt of 28993 *l.* 8 *s.* 1 *d.* found due to the Plaintiffs as aforeſaid, if the penal Sums in the aforeſaid three Bonds to Sir *William Morice*, *Thomas Wilſon* and *Duncan Campbell*, ought not in this Caſe to be allowed as Charges upon the Aſſets of the ſaid *Humphry Morice*; but whether the ſaid three penal Sums ought to be allowed in this Caſe as Charges upon the ſaid Aſſets or not, the ſaid Jurors know not; and thereupon they pray the Advice of the Court here in the Premiſſes, if upon the whole Matter aforeſaid it ſhall appear to the Court, that the ſaid three penal Sums ought not in this

this Caſe to be allowed as Charges upon the ſaid Aſſets, then the ſaid Jurors upon their Oath ſay, that as to the 32d Promiſe laid in the Plaintiffs Declaration within mentioned, the within mentioned *Humphry Morice* was indebted in his Life-time and on the Day of his Death to the Plaintiffs the Governor and Company of the Bank of *England* in the ſaid Sum of 28993 *l.* 8 *s.* 1 *d.* being Money had and received by the ſaid *Humphry Morice* to the Uſe of the ſaid Plaintiffs, and aſſeſs their Damages upon the aforeſaid 32d Promiſe at 28993 *l.* 8 *s.* 1 *d.* and 40 *s.* for Coſts; And further ſay, that in ſuch Caſe the within mentioned *Catherine Morice* had, on the Day of exhibiting the Plaintiffs Bill aforeſaid, Aſſets in her Hands of the ſaid *Humphry Morice* liable to the Demands of the ſaid Plaintiffs to the Value of 18969 *l.* 12 *s.* 5 *d.* and as to all the other Promiſes mentioned in the Plaintiffs Declaration aforeſaid, they ſay that the ſaid *Humphry Morice* did not make ſuch other Promiſes as therein mentioned, as the ſaid *Catherine Morice* has by pleading alledged. But if upon the whole Matter found, it ſhall appear to the ſaid Court that the penal Sums in the ſaid three Bonds ought in this Caſe to be allowed as Charges upon the ſaid Aſſets, then the ſaid Jurors ſay, that the within mentioned *Catherine Morice* had not, on the Day of exhibiting the ſaid Plaintiffs Bill againſt her, any Aſſets of the ſaid *Humphry Morice* in her Hands liable to the Demand of the ſaid Plaintiffs,

Plaintiffs, as ſhe the ſaid *Catherine* hath by her Plea within alledged in her Defence: And becauſe the Court of our ſaid Lord the King now here is not yet adviſed what Judgment to give of and concerning the Premiſſes, a Day is given to the ſaid Parties that they be before the Lord the King at *Weſtminſter* on *Thurſday* next after the Octave of St. *Hilary*, to hear their Judgment thereon, becauſe the ſaid Court of our ſaid Lord the King now here is not yet adviſed thereof. *Curia adviſare Vult.*

Wedneſday *next after the Octave of the Purification of the Virgin* Mary *in the 9th Year of King* George *the Second.*

IT is Ordered that Judgment be entred for the Plaintiffs, and the Court being of Opinion that the penal Sums in the two Bonds to *Thomas Wilſon* and *Duncan Campbell* in the Pleadings in this Cauſe mentioned ought to be allowed as Charges upon the Aſſets of *Humphry Morice* the Defendant's Teſtator, and the penal Sum in the Bond to Sir *William Morice* in the ſaid Pleadings alſo mentioned ought not to be ſo allowed, but that only the Principal Sum of five thouſand Pounds payable on the twenty-fourth Day of *June* one thouſand ſeven hundred and thirty-two, and the farther Sum of one thouſand five hundred Pounds payable on *Rule for Judgment on the Special Verdict.*

on the twenty-fourth Day of *June* One thouſand ſeven hundred and thirty-three, mentioned in the Condition of the ſaid Bond to Sir *William Morice*, with all Intereſt for the two laſt mentioned Sums from the twenty-fourth Day of *June* One thouſand ſeven hundred and thirty-one to the reſpective Days of Payment thereof, ought in this Caſe to be allowed as Charges upon the Aſſets of the ſaid *Humphry Morice*, by the Aſſent of the ſaid Plaintiffs, the Sum of four thouſand three hundred and ten Pounds being deducted out of the Sum of eighteen thouſand nine hundred and ſixty-nine Pounds twelve Shillings and five-pence in the ſaid Pleadings alſo mentioned. *It is further Ordered*, that Judgment be entred for fourteen thouſand ſix hundred and fifty-nine Pounds twelve Shillings and five-pence, Aſſets of the ſaid *Humphry Morice*, in the Hands of the ſaid Defendant. Upon the Motion of Mr. *Strange*.

By the Court.

Michael-

Michaelmas *Term, in the Year of*, &c.

London, to wit. *William Halford* complains of *Samuel Flower*, in the Custody of the Marshal of the *Marshalsea* of our Lord the King, before the King himself, for that, *to wit*, that whereas the said *William Halford* is a good, true, faithful, credible and honest Subject and Liegeman of our said Lord the now King, and has from his Birth hitherto behaved and carried himself as a good, true, faithful and honest Subject; and whereas the said *William* now uses and exercises, and for the Space of several Years last past has used and exercised, the Art or Mystery of a Dyer, and now is and for divers Years last past has been a Freeman of the City of *London*, and the said Art and Mystery in buying, selling, bargaining, working, labouring and other such like things belonging to the said Art or Mystery of a Dyer, with divers Subjects of our said Lord the King, as well within the said City as elsewhere within this Kingdom of *Great Britain*, for the whole Time aforesaid has used and exercised, and still exercises without any Falsity, Fraud, Theft, Felony or other noxious Crime, Stain or Question or Suspicion whatsoever, and has behaved himself honestly and justly in all his Affairs, Contracts and Businesses, and obtained and got great Gain and Profit by the

For Words spoke of a Dyer in the Way of his Trade.

the Way of buying, ſelling, bargaining, working, and labouring in the ſaid Art or Myſtery of a Dyer, to the handſome Maintenance of the ſaid *William Halford* and his Family, and very great Increaſe of his Riches; yet the ſaid *Samuel* not being ignorant of the Premiſſes, but greatly envying the happy State of the ſaid *William Halford*, and contriving and moſt wickedly intending intirely to deprive the ſaid *William Halford* of his good Name, Fame, Credit and Reputation, and alſo to bring him into an ill Name, Fame, Diſcredit and extreme Diſpleaſure among his Neighbours and other Subjects of our ſaid Lord the preſent King, by whom the ſaid *William Halford* is known, and to damage him in his Buſineſs, on the ſeventh Day of *July* in the Year of the Reign of our ſaid Lord the preſent King, at *London* aforeſaid, *to wit*, in the Pariſh of St. *Mary le Bow* in the Ward of *Cheap*, having Diſcourſe with divers Subjects of our ſaid Lord the preſent King, concerning the ſaid *William Halford* and his Art or Myſtery aforeſaid, openly ſaid, and with a loud Voice pronounced of the ſaid *William Halford*, in the Preſence and Hearing of divers Subjects of our Lord the preſent King, certain falſe, feigned, ſcandalous, opprobrious and defamatory Words, purporting that the ſaid *William Halford* uſed to defraud them, who intruſted him with their Goods to be dyed in his ſaid Art of a Dyer, of ſuch their Goods, and converted the ſame to his own proper Uſe: *And alſo whereas* the ſaid *Samuel*, of his further Ma-

Verba purportantia.

lice, on the ſame Day and Year at *London* aforeſaid in the Pariſh and Ward aforeſaid, having Diſcourſe with divers Subjects of our ſaid Lord the preſent King concerning the ſaid *William Halford* and his ſaid Art and Myſtery, openly in the Preſence and hearing of the ſaid ſeveral Subjects of our ſaid Lord the preſent King, ſaid of the ſaid *William Halford* that the ſaid *William* uſed to defraud thoſe, who intruſted him with their Goods to be dyed in his ſaid Art of a Dyer, of ſuch their Goods, and convert the ſame to his own proper Uſe: *And alſo whereas* one *William Henly* had intruſted the ſaid *William Halford* with two Pieces of Shalloon to be dyed by the ſaid *William Halford* in his ſaid Art of a Dyer, the ſaid *Samuel* of his further Malice, on the ſame Day and Year, at *London* aforeſaid in the Pariſh and Ward aforeſaid, having Converſation of the ſaid *William Halford*, ſpoke of ſaid *William Halford*, in the Preſence and Hearing of divers Subjects of our ſaid Lord the preſent King, other falſe, ſcandalous and opprobrious Words, purporting that the ſaid *William Halford* had taken off the Seals from the ſaid two Pieces of Shalloon with Intent to defraud the ſaid *William Henly*, and that the ſaid *William*, after the ſaid two Pieces were died, ſold the ſame to one Mr. *Saunders* for his the ſaid *William Halford*'s own Uſe: *And alſo whereas* the ſaid *William Henly* had entruſted the ſaid *William Halford* with two other Pieces of Shalloon to be dyed by the ſaid *Halford* in his ſaid Art of

Verba purportantia.

of a Dyer, the ſaid *Samuel* of his further Malice, on the ſame Day and Year, at *London* aforeſaid in the Pariſh and Ward aforeſaid, having Diſcourſe concerning the ſaid *William Halford*, openly in the Preſence and Hearing of divers Subjects of our ſaid Lord the preſent King, ſaid of the ſaid *William Halford*, that the ſaid *William Halford* had taken off the Seals from the ſaid two Pieces of Shalloon with Intent to defraud the ſaid *William Henly*, and that the ſaid *William Halford* after the ſaid two Pieces were dyed ſold the ſame to one Mr. *Saunders* for his the ſaid *William Halford*'s own Uſe: *And whereas* one *John Bareblock* had intruſted the ſaid *William Halford* with one Piece of Shalloon to be dyed by the ſaid *William Halford* in his ſaid Art of a Dyer, the ſaid *Samuel* afterwards of his further Malice, on the ſame Day and Year, at *London* aforeſaid in the Pariſh and Ward aforeſaid, having Diſcourſe concerning the ſaid *William Halford*, in the Preſence and Hearing of divers Subjects of our ſaid Lord the preſent King, ſaid certain other falſe, ſcandalous and opprobrious Words of the ſaid *William Halford*, purporting that the ſaid *William Halford* had taken the ſaid Piece of Shalloon of the ſaid *John Bareblock*, and had died it black, and had given it to his Taylor to be ſold for his the ſaid *William Halford*'s Benefit, and had defrauded the Owner (meaning the ſaid *John Bareblock*) thereof: *And alſo whereas* the ſaid *Bareblock* had intruſted the ſaid *William Halford*

Verba purportantia.

ford with one other Piece of Shalloon to be dyed by the ſaid *William Halford* in his ſaid Art of a Dyer; the ſaid *Samuel* afterwards of his further Malice, on the ſame Day and Year, at *London* aforeſaid in the Pariſh and Ward aforeſaid, having Diſcourſe concerning the ſaid *William Halford* in the Preſence and Hearing of divers Subjects of our ſaid Lord the preſent King, ſayd of the ſaid *William Halford*, that the ſaid *William Halford* had taken the ſaid Piece of Shalloon of the ſaid *John Bareblock*'s, and had dyed it black, and had given it to his Taylor to be ſold for his the ſaid *William Halford*'s Benefit, and had defrauded the Owner (meaning the ſaid *John Bareblock*) thereof: By Means of the ſpeaking and publiſhing of which ſaid ſeveral falſe, feigned, ſcandalous and defamatory Words, the ſaid *William Halford* is very much hurt, ſcandalized and injured in his good Name, Fame, Credit, Reputation and in his ſaid Buſineſs: And the ſaid *William Halford* has thereby loſt divers Sums of Money and great Profit, and is very much hindered in tranſacting his lawful Buſineſs; therefore the ſaid *William* ſays that he is injured, and has Damage to the Value of two hundred Pounds: And thereupon he brings Suit, *&c.*

Pledges, *&c.*

Pleas before our Lord the King at Weſtminſter, *of the Term of Saint* Michael *in the Eleventh Year of the Reign of our Sovereign Lord* George *the Second, by the Grace of God, of* Great Britain, France *and* Ireland *King, Defender of the Faith, and in the Year of our Lord* 1737.

R. 482.

London. STephen *Conning* puts in his Place *Arthur Stone* his Attorney, againſt *Joſeph Sabine*, Eſq; of a Plea of Trepaſs, Aſſault and Impriſonment.

London. Joſeph Sabine, Eſq; puts in his Place *Robert Crosby* his Attorney, at the Suit of the ſaid *Stephen Conning*, in the Plea aforeſaid.

Memorandum *of the ſame Term.*

London. Be it remembred, that on *Monday* next after three Weeks of St. *Michael* this ſame Term, before the Lord the King at *Weſtminſter*, came *Stephen Conning* by *Arthur Stone* his *Attorney*, and brought here in the Court of the ſaid Lord the King then there, his certain Bill againſt *Joſeph Sabine*, Eſq; in the Cuſtody of the Marſhal, and ſo forth, of a Plea of Treſpaſs, Aſſault and Impriſonment; and there are Pledges of proſecuting, *to wit*, *John Doe* and *Richard Roe*; which ſaid Bill follows in theſe Words. *London. Stephen Conning* complains of *Joſeph Sabine*, Eſq; in the Cuſtody of the Marſhal of the *Marſhalſea* of

of our Sovereign Lord the King, before the King himſelf; for that the ſaid *Joſeph Sabine* on the 29th Day of *May* in the Year of our Lord 1735. at *Gibralter*, *to wit*, at *London* in the Pariſh of St. *Mary le Bow* in the Ward of *Cheap*, with Force and Arms, *to wit*, with Staves, Swords and Whips, made an Aſſault upon the ſaid *Stephen*, and beat, wounded and treated him ill, and without any reaſonable Cauſe, and againſt the Law of *England*, impriſoned the ſaid *Stephen*, and kept and detained him in Priſon there for a long Time, *to wit*, for the Space of 20 Days, and tied the ſaid *Stephen* to a publick Whipping-Poſt, and with Whips ſtruck divers, *to wit*, three hundred Strokes or Laſhes upon the naked Body of the ſaid *Stephen*, and kept and confined the ſaid *Stephen* ſo whipt and wounded in Priſon for a long Time, *to wit*, for the Space of two Months, whereby the ſaid *Stephen* during all that Time underwent great Pain and Hardſhip, and was in Danger of loſing his Life, and alſo was hindered from uſing and exerciſing his Employment and Buſineſs of a Carpenter, and from acquiring thereby large Sums of Money; *And alſo* that the ſaid *Joſeph Sabine* afterwards, *to wit*, on the 2d Day of *Auguſt* in the Year aforeſaid, at *Gibralter* aforeſaid, *to wit*, at *London* in the Pariſh and Ward aforeſaid, with Force and Arms, *&c.* againſt the Will of the ſaid *Stephen*, compelled and forced the ſaid *Stephen* to depart from and leave *Gibralter* aforeſaid; by reaſon whereof the ſaid *Stephen* was not only put to great

Declaration on an Action brought by a Maſter Carpenter of the Office of Ordnance at Gibralter, *againſt General* Sabine *then Governor there, for cauſing the Plaintiff to be tried by a Court Martial to which not ſubject, and to undergo the Sentence thereof,* viz. *to receive* 300 *Laſhes, and to leave the Place and his Employment.*

Expence and Trouble, and the Goods and Effects of the ſaid *Stephen* there, of the Value of five hundred Pounds, were diminiſhed, loſt and conſumed, and the Family of the ſaid *Stephen* there brought to Want and great Diſtreſs; but alſo the ſaid *Stephen* was totally deprived of proceeding in and exerciſing the Buſineſs of a Maſter Carpenter of the Office of Ordnance at *Gibraltar* aforeſaid, in which he was retained and employed; And then and there did other Injuries to the ſaid *Stephen*, againſt the Peace of the preſent King, and to the Damage of the ſaid *Stephen* 10,000: And therefore he brings Suit, *&c.*

Plea. And the ſaid *Joſeph* by *Robert Crosby* his Attorney comes and defends the Force, Injury and Damages, and whatever elſe he ought to defend, when and where the Court will take the ſame into Conſideration, *Not Guilty.* and ſaith, that he is in no wiſe Guilty of the Premiſſes above laid to his Charge, as the ſaid *Stephen* above complains againſt him: And of this he puts himſelf upon his Country; and the ſaid *Stephen* likewiſe, *&c.* *Iſſue.* Venire *awarded.* Therefore let a Jury come thereupon before the Lord the King at *Weſtminſter* on *Monday* next after fifteen Days of St. *Martin*, and who neither, and ſo forth, to recognize, and ſo forth, becauſe as well, and ſo forth. The ſame Day is given to the Parties aforeſaid there, and ſo forth.

Continuance by Vic. non miſit Breve. At which Day before the Lord the King at *Weſtminſter* came the Parties aforeſaid by their Attornies aforeſaid, and the Sheriffs did not

ſned

ſend the Writ: Therefore as before let a Jury come before the Lord the King at *Weſtminſter* on *Monday* next after the Octave of the Purification of the Bleſſed Virgin *Mary*, and who neither, *&c.* to recognize, *&c.* becauſe as well, *&c.* The ſame Day is given to the Parties aforeſaid, there, *&c.* Afterwards the Proceſs is thereupon continued between the Parties aforeſaid, of the Plea aforeſaid, by the Jury between them being reſpited before our Lord the King at *Weſtminſter* until *Wedneſday* next after 15 Days from *Eaſter* Day then next following, unleſs the King's Right truſty and well beloved Sir *William Lee*, Knt. Chief Juſtice of our Lord the King, aſſigned to hold Pleas in the Court of our ſaid Lord the King before the King himſelf, ſhall firſt come on *Wedneſday* the 15th Day of *Feb.* at the *Guildhall* of the City of *London* aforeſaid, by Form of the Statute, *&c.* for Default of the Jurors, *&c.* *Entry of the Plea.*

At which Day before our Lord the King at *Weſtminſter* came the ſaid *Stephen Conning*, and the Chief Juſtice, before whom, *&c.* ſent here his Record before him had in the Words, *to wit*, Afterwards at the Day and Place within contained, before Sir *William Lee*, Knt. Chief Juſtice within named, having aſſociated to him *John Skynner*, Gent. by Form of the Statute, and ſo forth, came the within named *Stephen Conning* by his Attorney within named, and the within named *Joſeph Sabine*, Eſq; altho' ſolemnly required came not, but made Default; Poſtea.

Therefore let the Jurors of the Jury within mentioned be taken againſt him by Default; and the Jurors of that Jury being ſummoned came, who to ſay the Truth of the within Contents being choſen, tried and ſworn, ſay upon their Oaths, that the ſaid *Joſeph Sabine* is Guilty of the Premiſſes within laid to his Charge in Manner and Form as the aforeſaid *Stephen* within complains againſt him, and aſſeſs the Damages of the ſaid *Stephen*, by reaſon of the Premiſſes within mentioned, over and above his Coſts and Charges by him about his Suit in this behalf expended, to ſeven hundred Pounds, and for theſe Coſts and Charges to forty Shillings: Therefore it is conſidered, that the ſaid *Stephen Conning* recover againſt the ſaid *Joſeph Sabine* his ſaid Damages by the ſaid Jury in Form aforeſaid aſſeſſed, and alſo ninety-four Pounds for his ſaid Coſts and Charges, by the Court of our ſaid Lord the King now here adjudged of Increaſe to the ſaid *Stephen* by his Aſſent, which Damages amount in the whole to ſeven hundred and ninety-ſix Pounds.

Judgment ſigned the 5th of May, 11 George 2.

Incrementum

Writ of Error hereon brought, and Judgment affirmed in *Hilary* Term 1738.

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Trinity

Trinity Term in the Eleventh and Twelfth Years of King *George* the Second.

OUR Lord the King gave in Charge to his Sheriff of *Middleſex* his Writ cloſed in theſe Words, *to wit*, *George* the Second by the Grace of God King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, and ſo forth, to the Sheriff of *Middleſex*, Greeting: Whereas we heretofore commanded our Sheriff of *Middleſex*, that of the Goods and Chattels which were of *William Bury* deceaſed at the Time of his Death, in the Hands of *John Warbuton* and *Mary* his Wife, Executrix of the laſt Will and Teſtament of the ſaid *William Bury* deceas'd, in his Bailiwick, he ſhould cauſe to be made as well twenty-four Pounds fourteen Shillings, which *Sarah Bulkley* Widow, Adminiſtratrix of all and ſingular the Goods and Chattels, Rights and Credits of *Edmund Percival* deceaſed at the Time of his Death, who died Inteſtate, had in our Court before us at *Weſtminſter* recovered againſt them by Occaſion of the not performing of certain Promiſes and Undertakings made by the ſaid *William Bury* in his Life-time, to the ſaid *Edmund Percival* in his Life-time; as alſo twenty Shillings and nine Pounds ſixteen Shillings, which were adjudged

Entry of Scire facias inquir' *againſt* Baron *and* Feme *Executrix.* Fi. fa. *to Sheriff of* Middleſex, de bonis Teſtatoris, ſi, &c. Et ſi non, &c. *Coſts* de bonis propriis.

To levy of Teſtators goods 24s 14: d. Debt & 20. and 9s 16. Coſts. Si. &c.

judged to the ſaid *Sarah* in our ſaid Court before us, for her Coſts and Charges by her about her Suit in that Behalf expended; whereof the ſaid *John* and *Mary* were convicted, as appeared to us of Record, If they had ſo much in their Hands to be adminiſtred; and if they had not ſo much, then the ſaid twenty Shillings and nine Pounds ſixteen Shillings of the proper Goods and Chattels of the ſaid *John* and *Mary*; and that he ſhould have that Money before us at *Weſtminſter*, at a certain Day now paſt, to render to the ſaid *Sarah* for her Damage, Coſts and Charges aforeſaid: And our ſaid Sheriff of *Middleſex* at that Day returned to us, that the ſaid *John* and *Mary* had no Goods or Chattels in his Bailiwick, which were of the ſaid *William Bury* at the Time of his Death, in their Hands to be adminiſtred, whereof he could cauſe to be made the ſaid twenty-four Pounds fourteen Shillings of Damages aforeſaid, and twenty Shillings and nine Pounds ſixteen Shillings of Coſts and Charges aforeſaid, or any Part thereof: And that the ſaid *John* and *Mary* had no Goods and Chattels of their own proper Goods and Chattels in his Bailiwick, whereof he could cauſe to be made the ſaid twenty Shillings and nine Pounds ſixteen Shillings of Coſts and Charges aforeſaid, or any Part thereof: Whereupon, on the Behalf of the ſaid *Sarah* it was ſufficiently teſtified in the Court before us, that the ſaid *John* and *Mary* had in the County of *Lincoln* ſufficient Goods and Chattels which were of the ſaid *William Bury* at the Time of his Deceaſe,

Sicc.
et Si: non Then to levy
20ˢ. & 9ˡⁱ. 16ˢ. ſuch de
Bonis propriis: —

Return Nulla bona.

Deceaſe, in their Hands to be adminiſtred, whereof the ſaid twenty-four Pounds fourteen Shillings, and twenty Shillings and nine Pounds ſixteen Shillings, might be cauſed to be made: And it was further teſtified in our ſaid Court before us, that the ſaid *John* and *Mary* had in the ſaid County of *Lincoln* ſufficient of their own proper Goods and Chattels, whereof the ſaid twenty Shillings and nine Pounds ſixteen Shillings might be cauſed to be made: We therefore commanded our Sheriff of *Lincoln*, that of the Goods and Chattels which were of the ſaid *William Bury* at the Time of his Death, in the Hands of the ſaid *John* and *Mary*, in his Bailiwick, he ſhould cauſe to be made as well the ſaid twenty-four Pounds fourteen Shillings, as the ſaid twenty Shillings and nine Pounds ſixteen Shillings, if they had ſo much in their Hands to be adminiſtred; and if they had not ſo much in their Hands, then the ſaid twenty Shillings and nine Pounds ſixteen Shillings of their own proper Goods and Chattels; and that he ſhould have that Money before us at *Weſtminſter* at a certain Day alſo now paſt, to render to the ſaid *Sarah* for her Damages, Coſts and Charges aforeſaid. And our ſaid Sheriff of *Lincoln* at that Day returned to us, that by Virtue of the ſaid Writ to him directed he had cauſed to be made of the proper Goods and Chattels of the ſaid *John* and *Mary* the ſaid Sum of twenty Shillings and nine Pounds ſixteen Shillings for the ſaid Coſts and Charges, which

Fi. fa. *to the Sheriff of* Lincoln.

Return Coſts levied de bonis propriis.

which Money he had ready to render, as in the ſaid Writ he was commanded: And he did further certify, that the ſaid *John* and *Mary* had not any Goods and Chattels which were of the ſaid *William Bury* at the Time of his Death, in their Hands to be adminiſtred, within his Bailiwick, whereof he could cauſe to be made the ſaid Sum of twenty-four Pounds fourteen Shillings of Damages aforeſaid, or any part thereof: And becauſe the ſaid Returns are conceived to be in Delay of the Execution of the Damages aforeſaid; and alſo for that in our ſaid Court before us, on Behalf of the ſaid *Sarah*, it is ſufficiently teſtified, that divers Goods and Chattels which were of the ſaid *William Bury* at the Time of his Death, have ſince the Death of the ſaid *William Bury* come to the Hands and Poſſeſſion of the ſaid *John* and *Mary* to be adminiſtred, which Goods and Chattels the ſaid *John* and *Mary* have ſold and waſted, and have converted and diſpoſed of that Money thereupon received to their own proper Uſe; and that the Reſidue of the Goods and Chattels which were of the ſaid *William Bury* at the Time of his Deceaſe, have been eloined by the ſaid *John* and *Mary* to Places unknown to the ſaid *Sarah*, and by them converted to their own proper Uſe, with Intent that the Execution of the Damages aforeſaid might not be made: We being unwilling that thoſe things, which in our ſaid Court before us have been rightly acted or adjudged, ſhould be rendred void by

Nulla bona teſtatoris.

Suggeſtion of a Devaſtavit.

by Art or Deceit, command you that of the Goods and Chattels which were of the ſaid *William Bury* at the Time of his Deceaſe, in the Hands of the ſaid *John* and *Mary* to be adminiſtred, in your Bailiwick, you cauſe to be made the ſaid Sum of twenty-four Pounds fourteen Shillings of Damages aforeſaid, if you can levy the ſame; and that you have the Money thereupon levied before us at *Weſtminſter* on *Friday* next after the Morrow of the holy *Trinity*, to render to the ſaid *Sarah* for her Damages aforeſaid; and if the ſaid Sum cannot be thereupon levied, then if it ſhall appear to you by Inquiſition on the Oaths of good and lawful Men of your Bailiwick, in this behalf to be taken, or by any other Methods whereby you may the better underſtand or certify, that the ſaid *John* and *Mary* his Wife have ſold, eloined, waſted or converted, and diſpoſed to their own proper Uſe, Goods and Chattels which were of the ſaid *William Bury* at the Time of his Deceaſe, in their Hands to be adminiſtred, to the Value of the ſaid twenty-four Pounds fourteen Shillings of the Damages aforeſaid, or any Part thereof, that then by good and lawful Men of your Bailiwick you make known to the ſaid *John* and *Mary* that they be before us at *Weſtminſter* on *Friday* next after the Morrow of the holy *Trinity*, to ſhew if any thing they have or know to ſay for themſelves, why the ſaid *Sarah* ought not to have her Exe-

If no Goods, and a Devaſtavit *ſhall appear on Inquiſition, then* Sci. fa. quare.

Execution againſt them of the ſaid twenty-four Pounds and fourteen Shillings for Damages aforeſaid, to be levied of the proper Goods and Chattels of the ſaid *John* and *Mary*, if it ſeem expedient, and ſo forth; and further do and receive what our ſaid Court before us ſhall thereof then and there conſider in this behalf: And have there then the Names of thoſe by whom you ſhall make known to to them, and this Writ. Witneſs Sir *William Lee*, Knt. at *Weſtminſter*, the 15th Day of *May* in the eleventh Year of our Reign.

At which Day before our Lord the King at *Weſtminſter* came the ſaid *Sarah* in her proper Perſon; and the Sheriff, *to wit*, Sir *George Champion*, Knt. and *Robert Cater*, Eſq; returned the ſaid Writ to him in Form aforeſaid, directed in Manner and Form following, *to wit*, That the ſaid *John* and *Mary* had not any Goods or Chattels which were of the ſaid *William Bury* deceaſed, at the Time of his Death, in their Hands to be adminiſtred, in his Bailiwick, whereof he could cauſe the ſaid twenty-four Pounds fourteen Shillings of Damages aforeſaid, or any Part thereof, to made; and the ſaid Sheriff likewiſe returned a certain Inquiſition taken at the *Three-Tuns* in *Brook-Street* near *Holborn* in the County of *Middleſex*, on the twenty-fifth Day of *May* in the eleventh Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, &c. before the ſaid Sheriff

Nulla bona.

Inquiſition and Devaſtavit *found.*

riff, by Virtue of the ſaid Writ to him thereupon directed, on the Oaths of twelve good and lawful Men of his Bailiwick; whereby it was found that ſeveral Goods and Chattels, which were of the ſaid *William Bury* at the Time of his Death, had come to the Hands and Poſſeſſion of the ſaid *John* and *Mary* to be adminiſtred, to the Value of the ſaid twenty-four Pounds and fourteen Shillings of Damages aforeſaid, which ſaid Goods and Chattels they had ſold, eloined, waſted, converted, and diſpoſed to their own proper Uſe; And the ſaid Sheriff likewiſe returned, That the ſaid *John* and *Mary* had not any thing in his Bailiwick whereby or by which he could make known to them, and ſo forth; and that they or either of them were not found in the ſame, and they did not come, nor did either of them come: Therefore, as before, it is commanded to the Sheriff, that by good and lawful Men of his Bailiwick he make known to the ſaid *John* and *Mary*, that they be before our Lord the King at *Weſtminſter* on *Monday* next after fifteen Days from the Day of the holy *Trinity*, to ſhew if any thing they have or know to ſay for themſelves, why the ſaid *Sarah* ought not to have her Execution againſt them of the ſaid twenty-four Pounds fourteen Shillings for her Damages aforeſaid, to be levied of the proper Goods and Chattels of the ſaid *John* and *Mary*, if, *&c.* and further, *&c.* The ſame Day is given to the ſaid *Sarah* at the ſame Place: At which Day before our ſaid Lord the

Nihil *to the* Sci. fa.

Alias Sci. fa. *awarded.*

Nihil.

King at *Weſtminſter* came the ſaid *Sarah* in her proper Perſon; and the ſaid Sheriff as before returned, that the ſaid *John* and *Mary* had not any thing in his Bailiwick, whereby or by which he could make known to them, and that they were not, nor was either of them found in the ſame, and the ſaid *John* and *Mary*, although at that Day ſolemnly required did not, nor did either of them come, but they made Default. It is therefore conſidered that the ſaid *Sarah* have her Execution againſt the ſaid *John* and *Mary* of the ſaid twenty-four Pounds fourteen Shillings for her Damages aforeſaid, to be levied of the proper Goods and Chattels of the ſaid *John* and *Mary*, by the Default of the ſaid *John* and *Mary*, *&c.*

Judgment.

Replication to a Plea of Non Aff. infra Sex annos, *that the Plaintiff ſued out a Bill of* Middleſex, *with Continuance, by* Vic' non miſit breve, *to the Time of Appearance.*

And the ſaid *Joſeph* ſaith, that he by any thing before alledged by the ſaid *William* in Pleading ought not to be barred from having his aforeſaid Action againſt the ſaid *William*, becauſe he ſays, that he the ſaid *Joſeph* after the making the ſaid ſeveral Promiſes and Undertakings, *to wit*, in *Hilary* Term in the thirteenth Year of the Reign of his late Majeſty *George* the Firſt, late King of *Great Britain*, *&c.* for the Recovery of his Damages occaſioned by the not performing the ſeveral Promiſes and Undertakings aforeſaid, ſued out of his ſaid late Majeſty's Court before the ſaid late King, the ſaid Court being then at *Weſtminſter* in the ſaid County of *Middleſex*, a certain Precept of

the

the ſaid late King, called a Bill of *Middleſex*, againſt the ſaid *William*, directed to the then Sheriff of *Middleſex*, by which ſaid Precept the ſaid late King commanded the ſaid then Sheriff, that he ſhould take the ſaid *William*, if, *&c.* and him ſafely, *&c.* ſo that the ſaid then Sheriff might have his Body before our Lord the ſaid late King at *Weſtminſter* aforeſaid, on *Monday* next after the Octave of the Purification of the bleſſed Virgin *Mary* then next enſuing, to anſwer to the ſaid *Joſeph* on a Plea of Treſpaſs; and alſo to a Bill of the ſaid *Joſeph* againſt the ſaid *William* for two hundred Pounds, on Undertakings, according to the Cuſtom of the Court of the ſaid late King before the ſaid King to be exhibited, and that the ſaid Sheriff ſhould then have there that Precept, which ſaid Precept was ſo proſecuted by the ſaid *Joſeph* againſt the ſaid *William*, with Intent that the ſaid *William* might by Virtue thereof be taken and arreſted by his Body to appear before his ſaid late Majeſty at *Weſtminſter* at the Return of the ſaid Precept, and that on ſuch Appearance the ſaid *Joſeph* might exhibit his Bill againſt the ſaid *William* in his ſaid late Majeſty's Court before the ſaid late King in a Plea of Treſpaſs on the Caſe for not performing the ſaid ſeveral Promiſes and Undertakings mentioned in the abovcſaid Declaration of the ſaid *Joſeph*, in order to recover his Damages occaſioned by the not performing thereof, and might thereupon recover thoſe

the laſt return of Hilary

Damages againſt the ſaid *William*: At which Day, *to wit*, *Monday* next after the Octave of the Purification of the bleſſed Virgin *Mary*, before the ſaid late King at *Weſtminſter* aforeſaid, the ſaid *Joſeph* came in his own Perſon, and offered himſelf againſt the ſaid *William* on the aforeſaid Plea and Bill: And the ſaid Sheriff, *to wit*, Sir *John Lock* Knt. and *William Ogburn*, Eſq; then Sheriff of the County of *Middleſex*, returned that the ſaid *William* was not found in his Bailiwick, and the ſaid *William* did not come: Therefore as before the Sheriff was commanded, that he ſhould take the ſaid *William*, if, *&c.* and him ſafely, *&c.* ſo that he might have his Body before the ſaid late King at *Weſtminſter* aforeſaid on *Wedneſday* next after fifteen Days from the Day of *Eaſter* then next enſuing, to anſwer to the ſaid *Joſeph* on his Plea and Bill aforeſaid. The ſame Day was given to the ſaid *Joſeph* at the ſame Place: At which Day, before the ſaid late King at *Weſtminſter* aforeſaid, the ſaid *Joſeph* came in his own perſon, and offered himſelf againſt the ſaid *William* on the Plea and Bill aforeſaid; and the Sheriff did not return the ſaid Precept nor did he do any thing thereupon; and the ſaid *William* did not come: Therefore as before the Sheriff was commanded, that he ſhould take the ſaid *William*, if, *&c.* and him ſafely, *&c.* ſo that he might have his Body before the ſaid late King at *Weſtminſter* aforeſaid, on *Friday* next after the Morrow of the holy *Trinity*

The Laſt Return of Hilary.

1. Contin.

Firſt Return of Eaſter

2 Contin.

Firſt Return of Trin.

Trinity then next enſuing, to anſwer to the ſaid *Joſeph* on the Plea and Bill aforeſaid: The ſame Day was given to the ſaid *Joſeph* at the ſame Place: At which Day before the ſaid late King at *Weſtminſter* aforeſaid the ſaid *Joſeph* came in his own Perſon, and offered himſelf againſt the ſaid *William* on the Plea and Bill aforeſaid; and the ſaid Sheriff did not return the ſaid Precept, nor did he do any thing thereupon; and the ſaid *William* did not come: Therefore as before the Sheriff was commanded that he ſhould take the ſaid *William*, if *&c.* and him ſafely, *&c.* ſo that he might have his Body before the ſaid late King at *Weſtminſter* aforeſaid, on *Monday* next after three Weeks from the Day of St. *Michael* then next enſuing, to anſwer to the ſaid *Joſeph* on the Plea and Bill aforeſaid: The ſame Day was given to the ſaid *Joſeph* at the ſame Place; Before which Day, *to wit*, on the eleventh Day of *June* in the Year of our Lord One thouſand ſeven hundred and twenty-ſeven, the ſaid King *George* the Firſt departed this Life, *to wit*, at *Weſtminſter* aforeſaid; At which Day, *to wit*, the ſaid *Monday* next after three Weeks from the Day of St. *Michael*, before our Lord *George* the Second, now King of *Great Britain*, *&c.* at *Weſtminſter* aforeſaid, the ſaid *Joſeph* came in his own Perſon, and offered himſelf againſt the ſaid *William* on the Plea and Bill aforeſaid: and the Sheriff did not return the ſaid Precept, nor did he do any thing thereupon; and the ſaid *William* did not come. [*Et ſic de cæteris*, to the

3. Contin

First Return of Michas

Demiſe le Roy.

Proceſs the Defendant appeared on; the Award of which follows.] Therefore, as before, the ſaid Sheriff was commanded that he ſhould take the ſaid *William*, if, *&c.* and him ſafely, *&c.* ſo that he might have his Body before our ſaid Lord the King at *Weſtminſter* aforeſaid on *Wedneſday* next after three Weeks from the Day of St. *Michael* next enſuing, to anſwer to the ſaid *Joſeph* on the Plea and Bill aforeſaid: The ſame Day was given to the ſaid *Joſeph* at the ſame Place: At which Day before our ſaid Lord the King at *Weſtminſter* aforeſaid came as well the ſaid *Joſeph* by his Attorney, as the ſaid *William* by his Attorney, and appeared in the ſaid Court here, according to the Cuſtom of the ſaid Court, to anſwer the ſaid *Joſeph* on the Plea and Bill aforeſaid, and thereupon the ſaid *Joſeph* upon the ſaid Appearance of the ſaid *William* then and there in the ſaid Court, here exhibited his ſaid Bill againſt the ſaid *William*, declaring againſt him in the Manner aforeſaid, as by the Record and Proceedings now remaining in his ſaid Majeſty's Court before our ſaid Lord the King at *Weſtminſter* aforeſaid may more fully appear: And the ſaid *Joſeph* further ſaith, that the ſaid *William*, within ſix Years next before the Iſſuing out the ſaid Precept firſt above mentioned at *Weſtminſter* aforeſaid, took upon himſelf in Manner and Form as the ſaid *Joſeph* above complains againſt him: And this he is ready to verify. Wherefore he prays Judgment and his Damages, by reaſon of the not

If Poſt is made & appears on a Capiatur, ſay as underneath at mark ✠, inſtead of the words with the Lines drawn under 'em.

Defendant appears.

If Poſt Appears on a Capiatur, ſay.
not

not performing the ſaid Promiſes and Undertakings, to be adjudged to him. *Pengelly.*

And the ſaid *William* as before ſaith, that the ſaid *Joſeph* by any thing by him above alledged in replying ought not to have or maintain his ſaid Action againſt him the ſaid *William*, becauſe he ſays, that there is not any ſuch Record of a Precept in the ſaid Replication of the ſaid *Joſeph* firſt above-mentioned, and Proceeding thereof affiled, or now remaining of Record in his ſaid preſent Majeſty's Court before our ſaid Lord the King at *Weſtminſter*, as the ſaid *Joſeph* in pleading by way of Reply hath above alledged: And this the ſaid *William* is ready to verify. Wherefore as before he prays Judgment if the ſaid *Joſeph* ought to have his ſaid Action maintained againſt him. *Re-joinder* Nul tiel record'.

And the ſaid *Joſeph* ſaith, that there is ſuch a Record of the ſaid Precept in the ſaid Replication firſt above-mentioned, and Proceedings thereof, now remaining in the Court of our now Lord the King before the King himſelf, as the ſaid *Joſeph* in his Replication hath above alledged: And this he is ready to verify by the ſaid Record; and he prays that the ſaid Record may be by the ſaid Court here viewed and inſpected: But becauſe the Court of our ſaid Lord the King now here is not yet adviſed about giving Judgment of and upon the Premiſſes, Day is therefore given to the Parties aforeſaid to come before our Lord the King at *Weſtminſter* until *Monday* next after the Morrow of the Aſcenſion of our Lord, to hear *Sur-rejoinder* Habetur tale Record'. *Continuance by* Cur' adviſare vult.

hear Judgment of and upon the Premiſſes, for that the Court of our ſaid Lord the King now here is not yet adviſed thereof.

Error aſſigned in Parliament

AFterwards, *to wit*, on the Day of in the Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, and ſo forth, before the King himſelf in his Parliament, the ſaid *E. S.* comes by *G. W.* his Attorney, and ſays, that in the ſaid Record and Proceſs, as alſo in giving the ſaid Judgment there is manifeſt Error in this, *to wit*, That the ſaid Declaration and the Matter contained therein, is not ſufficient in Law to maintain the Action of the ſaid *G. R.* againſt the ſaid *E. S.* therefore in that there is manifeſt Error; alſo in this, that by the ſaid Record it appears, that the ſaid Judgment was given in Form aforeſaid for the ſaid *G. R.* againſt the ſaid *E. S.* where by the Law of the Land the ſaid Judgment ought to have been given for the ſaid *E. S.* againſt the ſaid *G. R.* and the ſaid *E. S.* prays, and ſo forth.

The like.

Afterwards, *to wit*, on the Day of in the Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, and ſo forth, before our ſaid Lord the King and great Men and Peers aſſembled in this preſent Parliament at *Weſtminſter* in the County of *Middleſex*, the ſaid *Thomas Lloyd* comes by *J. L.* his Attorney and ſays that there is manifeſt Error in the ſaid Record and

and Proceſs, alſo in giving and affirming the ſaid Judgment mentioned in the ſaid Record, in this, *to wit*, that by the ſaid Record it appears, that the ſaid Judgment given by the Court of our ſaid Lord the King, before the King himſelf at *Weſtminſter*, was given for the ſaid *John Badger* againſt the ſaid *Thomas Lloyd*, where by the Law of the Land the ſaid Judgment ought to have been given for the ſaid *Thomas Lloyd* againſt the ſaid *John Badger*; and therefore in that there is manifeſt Error; there is alſo Error in affirming the ſaid Judgment, becauſe he ſays that the ſaid Judgment was affirmed in the Court of our Lord the King of *Exchequer* Chamber at *Weſtminſter* before the Juſtices of the Common Bench and the Barons of the ſaid *Exchequer*, where no ſuch Affirmance of the ſaid Judgment ought to have been thereupon given; but the ſaid Judgment by the Law of the Land ought to have been reverſed; and therefore in that there is manifeſt Error. And the ſaid *Thomas Lloyd* prays that the ſaid Judgment, for the ſaid Errors and others in the ſaid Record and Proceſs, may be reverſed, annulled and intirely ſet aſide, and that he may be reſtored to all that he has loſt by Occaſion of the ſaid Judgment and Affirmance, and that the ſaid *John Badger* may rejoin to the ſaid Errors, and ſo forth.

Error aſſigned on a Judgment and Affirmance of that Judgment, in Ireland.

Afterwards, *to wit*, on next after in this ſame Term before our Lord the King at *Weſtminſter* the ſaid *Nicholas Green* and *W. C.* come by *L. H.*

L. H. their Attorney, and ſay, That in the ſaid Record and Proceſs, and alſo in giving the ſaid Judgment, and alſo in affirming the ſame, there is a manifeſt Error, in this, *to wit*, that by the Record of the ſaid Judgment and Affirmance of the ſame it appears, that the ſaid Judgment in Form aforeſaid given and affirmed, was given and affirmed for the ſaid *James Waller* againſt the ſaid *Nicholas* and *William*, where, by the Law of the Land of the ſaid Kingdom of *Ireland*, the ſaid Judgment ought to have been given for the *Nicholas* and *William* againſt the ſaid *James*; therefore in that there is manifeſt Error: And this they the ſaid *Nicholas* and *William* are ready to verify. Wherefore they pray that the ſaid Judgment and Affirmance thereof, for the ſaid Error and other Errors in the ſaid Record and Proceſs, may be reverſed, annulled and intirely ſet aſide, and that they the ſaid *Nicholas* and *William* may be reſtored to all that they have loſt by Occaſion of the ſaid Judgment and Affirmance, and ſo forth, and that the ſaid *James* may rejoin to the ſaid Errors, and ſo forth.

Error aſſigned in B. R. *on a Judgment given in* C. B.

Afterwards, *to wit*, on next after the before our Lord the King at *Weſtminſter*, the ſaid *Thomas Brooks* comes by *Thomas Harvey* his Attorney, and ſays, That in the ſaid Record and Proceſs, alſo in giving the ſaid Judgment, there is manifeſt Error, in this, *to wit*, that the ſaid Declaration in the ſaid Record mentioned, and upon which the ſaid Judgment is given in Form aforeſaid, and the

the Matter therein contained, is not ſufficient in Law to maintain the ſaid Judgment thereupon given in Form aforeſaid; and ſo the ſaid Judgment thereupon given in Form aforeſaid is Erroneous and void in Law; and therefore in that there is manifeſt Error; there is alſo manifeſt Error in this, that where by the ſaid Record it appears, that the ſaid Judgment in Form aforeſaid given, was given for the aforeſaid Sir *William Huſtler*, Knt. Sir *Richard Osbaldiſton*, Knt. and *William Osbaldiſton*, againſt the ſaid *Thomas Brooke*, where by the Law of the Land Judgment in the ſaid Plea ought to have been given for the ſaid *Thomas Brooke* againſt the ſaid Sir *William Huſtler*, Knt. Sir *Richard Osbaldiſton*, Knt. and *William Osbaldiſton*; and therefore in that there is manifeſt Error; and he prays that the ſaid Judgment for theſe Errors and others in the ſaid Record and Proceſs may be reverſed, annulled and intirely ſet aſide, and that he the ſaid *Thomas* may be reſtored to all that he has loſt by Occaſion of the ſaid Judgment, and that the ſaid Sir *William Huſtler*, Knt. Sir *Richard Osbaldiſton*, Knt. and *William Osbaldiſton* may rejoin to the ſaid Errors, and ſo forth: And the ſaid Sir *William Huſtler*, Knt. Sir *Richard Osbaldiſton*, Knt. and *William Osbaldiſton* come by *Adrian Moore* their Attorney, and ſay, That there is no Error either in the ſaid Record and Proceſs, or giving the ſaid Judgment; And pray that the Court of our Lord the King now here may proceed to examine as well the ſaid Record and Proceſs, as the ſaid Matters

above aſſigned for Errors by the ſaid *Thomas Brooke*; And that the ſaid Judgment may be in all things affirmed.

Error aſſigned on Judgment in C. B.

And the ſaid *Bridget* Counteſs Dowager of *Plymouth* by *Henry Doughty* her Attorney comes and ſays, That in the ſaid Record and Proceſs, as alſo in giving the ſaid Judgment there is manifeſt Error, in this, *to wit*, that the ſaid Declaration, and the Matter therein contained, are not ſufficient in Law to maintain the Action of the ſaid *Thomas* and *Dorothy* thereupon againſt her the ſaid Counteſs; therefore in that there is manifeſt Error; there is alſo Error in this, that by the ſaid Record it appears, that the ſaid Judgment given in the Manner and Form aforeſaid, was given for the ſaid *Thomas* and *Dorothy* againſt the ſaid Counteſs in the Plea aforeſaid, where by the Law of the Land the ſaid Judgment ought to have been given for the ſaid Counteſs againſt the ſaid *Thomas* and *Dorothy*; and therefore in that alſo there is manifeſt Error: And the ſaid Counteſs further ſays, that there is alſo Error in this, *to wit*, that there is not any Warrant of Atrorney affiled of Record in the ſaid Court of *Common Bench* between the ſaid Parties of the Plea aforeſaid, to Warrant the ſaid *Charles Draper* to be Attorney for the ſaid *Thomas* and *Dorothy* againſt the ſaid Counteſs in the Plea aforeſaid; therefore in that alſo there is manifeſt Error: Wherefore the ſaid Counteſs prays the Writ of our Lord the King of *Certiorari* to the Chief Juſtice of our ſaid Lord the King

No Warrant of Attorney.

Certiorari *prayed.*

of

of the Bench to be directed, and ſo forth; and it is granted to her, and ſo forth: Whereby it is commanded to Sir Knt. Chief Juſtice of the Bench aforeſaid, That he ſearch the Rolls and other Memorandums of the Warrants of Attorney of the County of *Middleſex* of *Eaſter* Term in the Year of the Reign of our ſaid Lord the King, being in his Cuſtody on Record, and that he without Delay certify to our ſaid Lord the King, whereſoever, and ſo forth, what he ſhall thereupon find in the ſaid Rolls and Memorandums, together with the Writ of our ſaid Lord the King to him thereupon directed, and ſo forth; which ſaid Chief Juſtice of the Bench aforeſaid anſwered to our ſaid Lord, That the Execution of the ſaid Writ appeared in a certain Schedule annexed to the ſaid Writ, in which ſaid Schedule is contained the Title of the Rolls of the Warrants of Attorney filed of *Eaſter* Term aforeſaid in the ſaid Writ ſpecified, being in the Cuſtody of the ſaid Chief Juſtice on Record, and the Record of a certain Warrant of Attorney between the Parties aforeſaid, of the Plea aforeſaid, in the ſame Form in which the ſaid Warrant of Attorney is entred on Record on the ſaid Rolls; which ſaid Title and Warrant of Attorney follow in theſe Words: The Rolls of Attornies received before Sir Knt. Chief Juſtice of our Lord the King of the Bench, and his Companions, of *Eaſter* Term in the Year of the Reign of our Sovereign Lord King of *Great*

Award of the Certiorari.

Return.

Great Britain, *France* and *Ireland*, Defender of the Faith, and ſo forth.

Warrant of Attorney.

Middleſex, to wit, *Thomas Throgmorton*, Eſq; and *Dorothy* his Wife, Executrix of the laſt Will and Teſtament of Sir *Edward Picke*, Knt. put in their Place *Charles Draper* their Attorney, againſt *Bridget* Counteſs Dowager of *Plymouth*, Executrix of the laſt Will and Teſtament of *Charles* Earl of *Plymouth*, of a Plea of Debt. Which ſaid Writ is affiled among the Records without a Day, and ſo forth: And upon this the ſaid *Thomas* and *Dorothy* by *Michael Johnſon* their Attorney come freely here into Court, and the ſaid *Bridget* Counteſs Dowager of *Plymouth* as before ſays, that in the ſaid Record and Proceſs, as alſo in giving the Judgment aforeſaid, there is manifeſt Error, by alledging the Errors aforeſaid by her in Form aforeſaid alledged; And prays that the ſaid Judgment, for thoſe Errors and others in the ſaid Record and Proceſs, may be reverſed, annulled and intirely ſet aſide, and that ſhe may be reſtored to all that ſhe has loſt by Occaſion of the ſaid Judgment, and ſo forth, and that the ſaid *Thomas* and *Dorothy* may rejoin to the ſaid Errors, and ſo forth, and that the Court of our ſaid Lord the King here, may proceed to the Examination as well of the ſaid Record and Proceſs, as of the aforeſaid Matters above aſſigned for Error, and ſo forth. And the ſaid *Thomas* and *Dorothy* ſay, that there is no Error either in the ſaid Record and Proceſs, or in giving the ſaid Judgment; And they likewiſe pray, that the Court of our ſaid Lord the King may

In nullo eſt Erratum *rejoined.*

may proceed to the Examination as well of the ſaid Record and Proceſs, as of the Matters aforeſaid above aſſigned for Error, and that the ſaid Judgment may be in all things affirmed, and ſo forth. And becauſe the Court of our ſaid Lord the King now here, is not yet adviſed what Judgment to give thereupon, a Day is given to the ſaid Parties, that they be before our Lord the King, from the Day of St. *Michael* in three Weeks then next enſuing, whereſoever, and ſo forth, to hear their Judgment thereon, becauſe the Court of our ſaid Lord the King now here, is not yet adviſed thereof: At which Day before our Lord the King at *Weſtminſter* the ſaid Parties come by their Attornies aforeſaid; but becauſe the Court of our ſaid Lord the King now here is not yet adviſed what Judgment to give of and concerning the Premiſſes, a Day is given to the ſaid Parties that they be before our Lord the King on the Octave of St. *Hilary*, whereſoever, and ſo forth, to hear their Judgment thereon, becauſe the Court of our ſaid Lord the King now here, is not yet adviſed thereof: At which Day before our Lord the King at *Weſtminſter* the ſaid Parties come by their Attornies aforeſaid; but becauſe the Court of our ſaid Lord the King now here, is not yet adviſed what Judgment to give of and concerning the Premiſſes, a Day is given to the ſaid Parties that they be before our Lord the King in fifteen Days of *Eaſter*, whereſoever, and ſo forth, becauſe the Court of our ſaid Lord the King now here, is not yet adviſed thereof: At which Day before our Lord

Continuance by Cur' adviſare vult.

Continuance.

Continuance.

Lord the King at *Weſtminſter* the ſaid Parties come by their Attornies aforeſaid; upon which as well the ſaid Record and Proceſs and Judgment thereupon given, as the ſaid Cauſes and Matters above for Error aſſigned, being viewed and by the Court of our ſaid Lord the King now here fully underſtood and diligently examined; For that it appears to the Court of our ſaid Lord the King now here, that there is manifeſt Error in the ſaid Record and Proceſs, alſo in giving the ſaid Judgment; it is conſidered, that the ſaid Judgment, for the ſaid Errors and others in the ſaid Record and Proceſs, be reverſed, annulled and intirely ſet aſide, and that the ſaid *Bridget* Counteſs Dowager of *Plymouth* be reſtored to all that ſhe hath loſt by Occaſion of the ſaid Judgment, and ſo forth.

Judgment reverſed.

Pleas before our Lord the King at Weſtminſter, *of the Term of the holy* Trinity *in the Year of the Reign of our Sovereign Lord* George *the Second, now King of* Great Britain, *and ſo forth.*

Roll.

England, to wit.

OUR Lord the King gave in Charge to his Right truſty and well beloved Sir *John Willes*, Knt. his Chief Juſtice of the Bench, his Writ cloſe in theſe Words, *to wit*, *George* the Second, by the Grace of God King of *Great Britain*, *France*

The Manner of making up a Record of Niſi prius, *on Iſſue joined in Error.*

and *Ireland*, Defender of the Faith, and ſo forth, To our Right truſty and well beloved Sir *John Willes*, Knt. our Chief Juſtice of the Bench, Greeting: Becauſe in the Record and Proceſs, as alſo in giving Judgment of a Plaint which was in our Court before you and your Companions our Juſtices of the Bench, by our Writ between *John Alexander* and *John Woods* late of *London* Merchant, *John Oſgood* late of *London* Merchant, and *Nathaniel Rouſe* late of *London* Merchant, of a certain Treſpaſs on the Caſe to the ſaid *John Alexander*, and ſo forth (to the End of the Tranſcript) and the ſaid *John Woods John Oſgood*, and *Nathaniel* in Mercy, and ſo forth. *The Record of the Judgment after a Verdict in Caſe.*

Afterwards, *to wit*, on *Wedneſday* next after fifteen Days of *Eaſter* in that ſame Term, before our Lord the King at *Weſtminſter* the ſaid *John Oſgood* and *Nathaniel Rouſe* come in their proper Perſons, and ſay, That in the ſaid Record and Proceſs, as alſo in giving the ſaid Judgment, there is manifeſt Error, in this, *to wit*, that it appears by the ſaid Record, that the ſaid Judgment is given as well againſt the ſaid *John Woods* as againſt the ſaid *John Oſgood* and *Nathaniel Rouſe*, when in Truth the ſaid *John Woods* in the ſaid Plea mentioned died before the Trial of the Iſſue in the ſaid Record joined between the Parties aforeſaid and before the giving the ſaid Judgment, *to wit*, on the Day of in the Year of the Reign of our ſaid Sovereign Lord the now King at *Horſham* aforeſaid, in the County of *Suſſex* aforeſaid and ſo the ſaid Judg- *Error aſſigned.* *Death of one of the Defendants before Trial.*

Judgment is erroneous and void in Law. And the ſaid *John Oſgood* and *Nathaniel Rouſe* pray, that the ſaid Judgment, for the Error aforeſaid, and other Errors in the ſaid Record and Proceſs, may be reverſed, annulled and intirety ſet aſide; and that they the ſaid *John Oſgood* and *Nathaniel Rouſe* may be reſtored to all they have loſt by Occaſion of the ſaid Judgment; and they pray the Writ of our Lord the King to ſummon the ſaid *John Alexander* to come before our Lord the King to hear the ſaid Record and Proceſs; and it is granted to them. By which it is commanded to the Sheriff of *Suſſex*, that by good, and ſo forth, he make known to the ſaid *John Alexander*, that he be before our Lord the King on the Morrow of the holy *Trinity*, whereſoever, and ſo forth, to hear the ſaid Record and Proceſs, if, and ſo forth, and further, and ſo forth: The ſame Day is given to the ſaid *John Oſgood* and *Nathaniel Rouſe*, and ſo forth: At which Day before our Lord the King at *Weſtminſter* the ſaid *John Oſgood* and *Nathaniel Rouſe* come in their proper Perſons, and the Sheriff did not return the ſaid Writ; and the ſaid *John Alexander* on the fourth Day of the Plea being ſolemnly required alſo comes by *John Allen* his Attorney, and ſays, that by any thing before alledged the ſaid Judgment ought not to be reverſed, becauſe he ſays, That the ſaid *John Woods* in the ſaid Plea mentioned, is yet in Being and alive; without this, that the ſaid *John Woods*, before the Trial of the ſaid Iſſue in the ſaid Record joined between the Parties aforeſaid, died

Award of Scire facias *ad Audiendum Errores.*

Vic' non miſit breve.

Plaintiff in original Action appears.

Pleads the ſaid Defendant is living.

And traverſes his Death.

died in Manner and Form as the ſaid *John Oſgood* and *Nathaniel* have above alledged: And this he is ready to verify. Wherefore he prays, that the ſaid Judgment may be in all things affirmed, and ſo forth.

And the ſaid *John Oſgood* and *Nathaniel Rouſe* as before ſay, That the ſaid *John Woods*, before the Trial of the ſaid Iſſue in the ſaid Record joined between the Parties aforeſaid, died in Manner and Form as they the ſaid *John Oſgood* and *Nathaniel Rouſe* have above alledged; and they pray that this may be inquired of by the Country; and the ſaid *John Alexander* does likewiſe the ſame, and ſo forth. It is therefore commanded to the Sheriff of the ſaid County of *Suſſex*, that he cauſe to come before our Lord the King from the Day of the holy *Trinity* in three Weeks, whereſoever, and ſo forth, twelve, and ſo forth, of the Body of the County, and ſo forth, by whom and ſo forth, and who neither, and ſo forth, to take Cognizance upon their Oaths, whether the ſaid *John Woods*, before the Trial of the ſaid Iſſue in the ſaid Record joined between the Parties aforeſaid, died, as the ſaid *John Rouſe* and *Nathaniel Rouſe* have alledged, or no; becauſe as well, and ſo forth: The ſame Day is given to the Parties aforeſaid, and ſo forth: At which Day before our Lord the King at *Weſtminſter* came as well the ſaid *John Oſgood* and *Nathaniel Rouſe* in their proper Perſons, as the ſaid *John Alexander* by his Attorney aforeſaid; and the Sheriff of *Suſſex*, *to wit*, returns the ſaid Writ of *Venire facias* to him in Form aforeſaid directed,

Replication.

Iſſue.

Venire awarded.

Return.

ed, in all things ſerved and executed, together with a Panel of the Names of the Jurors, of whom none, and ſo forth. It is therefore commanded to the ſaid Sheriff, that he diſtrain the ſaid Jurors by all their Lands, and ſo forth, ſo that he may have their Bodies before our Lord the King from the Day of St. *Michael* in three Weeks, whereſoever, and ſo forth, or before the Juſtices of our ſaid Lord the King aſſigned to hold the Aſſizes in the County aforeſaid, if they ſhall firſt come on the Day of at in the County aforeſaid, according to the Form of the Statute in ſuch Caſe made and provided, for Default of the Jurors, and ſo forth. Therefore let the Sheriff have the Bodies, and ſo forth: The ſame Day is given to the Parties aforeſaid, and ſo forth.

Diſtringas *awarded.*

Le Sciendum. And be it known, that the King's Writ in this Caſe on Record was delivered to the Deputy Sheriff of the ſaid County, on [the laſt Day of the Term] in this ſame Term before our Lord the King at *Weſtminſter*, to be executed according to Law, at his Peril, and ſo forth.



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